SOVIET LAW IN ACTION

The Recollected Cases of a Soviet Lawyer

BORIS A. KONSTANTINOVSKY

Edited by

HAROLD J. BERMAN

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THE RECOLLECTED CASES OF A SOVIET LAWYER

BORIS A. KONSTANTINOVSKY

Formerly Professor of Law, University of Odessa

Edited, with Notes and Commentary,
By

HAROLD J. BERMAN

Professor of Law, Harvard University

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PREFACE

It is paradoxical that the results and implications of the Bolshevik Revolution may be partly assessed in terms of the legal system which it has produced. Revolutionaries are not by nature respecters of law: to this rule the Bolsheviks offer no exception. Neither do they, however, offer exception to another rule: that once in power, revolutionaries are dependent upon law, and upon respect for law, for the formulation and effectuation of their policies. The paradox is resolved as the legal nihilism of the first stages of the revolutionary process is succeeded by a period of stabilization. This period was inaugurated in Soviet Russia in the mid-1930's and was given Stalin's blessing in his 1936 Report on the Draft Constitution, in which he said, "We need stability of laws now more than ever." That statement has become one of the principal slogans of the new Soviet conservatism.

The story of the Soviet "rehabilitation of law" has been told in one version or another in numerous books and articles published in the United States since the end of World War II, including six books devoted entirely to Soviet law.* Each version has also accounted in one way or another for the coexistence, together with the newer legality, of the regime of force. It is well known that certain important matters—for example, political opposition, real or suspected—are disposed of with practically no regard for law whatever. The coexistence side by side of a system of force and a system of law has raised the question to what extent the system of law is merely a paper system, in books, and to what extent it is real and applicable in action. To this question the scholars have been able to give no definitive answer, for the simple reason that without direct access to the Soviet Union, without free observation of Soviet conditions and free discussion with Soviet citizens, there can be no definitive answer. We are somewhat in the position of those who study the Roman law of the time of Justinian. We can describe the Soviet legal system in some detail, but we can only discuss in general terms its significance in the daily life of the people. Even illustrations drawn from reported cases in the Soviet Supreme Court or from cases in the lower courts noted in Soviet legal periodicals leave open the question whether they are typical or aberrational.

The importance of the present collection of cases is that they give a detailed, though necessarily incomplete, picture of Soviet law in action as witnessed by a former Soviet lawyer and as later recollected by him freely in this country. The author of the cases was the chief legal adviser (or, as we would say, the general counsel) of a large Soviet state business enterprise during the decade 1931–1941 and was also a professor of law in a Soviet university. The cases are ones that have stuck in his memory for one reason or another. Most of them are ones that he himself argued. They have value as a fragment of Soviet life—

* In order of publication, these are: Rudolf Schlesinger, *Soviet Legal Theory* (1945); Andrei Ia. Vyshinsky, *The Law of the Soviet State* (translated 1948); Vladimir Gsovski, *Soviet Civil Law* (2 vols., 1948–1949); John N. Hazard and Morris Weisberg, *Cases and Readings on Soviet Law* (1950); Harold J. Berman, *Justice in Russia* (1950); Hugh W. Babb, trans., *Soviet Legal Philosophy* (1952).

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and Soviet law—a chronicle of the professional experiences of a practicing Soviet lawyer.

Professor Konstantinovsky has provided the following autobiographical data: He was born in 1899 near Moscow, studied law at the University of Moscow, and upon graduation became an assistant professor (*dotsent*) there in 1923. From 1925 to 1944 he taught law in Odessa in various departments of what eventually became the University of Odessa. He became a full professor in 1940. His subjects were the history of Russian public law, the public law of "bourgeois" states (England, France, Germany, Switzerland, the United States, and others), and international law. (Not being a member of the Communist Party, there were many subjects which were not open to him to teach.) Since his salary at the law school was not enough to support his family, in 1931 he took an additional job, that of chief legal adviser of the Odessa Bread Trust. With some eighteen subordinate plants and enterprises, this government corporation produced bread and pastry for the 600,000 people of the city of Odessa. Professor Konstantinovsky, with five lawyers under him, handled the various legal problems of the trust, including problems arising from the interrelations of the enterprises within the trust, commercial relations with purchasers and suppliers, labor relations, and other matters. One of the cases in this collection came to him as a member of the three-man "legal aid society" of the Odessa association of college teachers.*

Following the Rumanian occupation of Odessa in 1941 Professor Konstantinovsky remained as a law teacher at the university but was unable to continue at the Bread Trust, which fell under Rumanian management. With the impending reconquest of Odessa by the Russians in 1944, the Germans, who replaced the Rumanians as occupiers during the last few weeks, evacuated the entire Odessa University faculty to Germany. Professor Konstantinovsky and his wife and two daughters were liberated from the Germans by United States troops in 1945. Because of their antipathy to Communism as a political system, and their fear of being persecuted if they returned to the Soviet Union, they decided to seek asylum in the United States. They have lived in this country since 1946.

Professor Konstantinovsky is a rare person among political expatriates in that he has retained an extraordinary objectivity in reporting his experiences. In the two years in which he has worked with me, first in giving assistance on my book *Justice in Russia* and then in the preparation of the present volume, I have been struck repeatedly by his ingrained inclination always to separate facts and opinions. His own political convictions, which he associates with the liberal democratic and strongly anti-Soviet position of Kerensky, do not seem to influence one way or another his description of the Soviet legal system and of the cases which he recollects. He lets the facts take him where they will, and the conclusions lie where they fall. He seems entirely unconcerned whether the reports which he gives put the Soviet in a good light or bad. The result is a picture which is neither black nor white nor gray, but variegated and colorful.

Another rare quality of Professor Konstantinovsky which deserves mention in this connection is his frank admission of ignorance concerning those matters with which he has not had direct experience. The result is a collection of cases which is representative of his wide practice but which from the point of view

* See below, page 12, note 6.

of Soviet law as a whole contains serious omissions and disproportions. However, this defect is inevitable in a legal chronicle of this kind, whose purpose it is to present episodes of Soviet law, not a well-rounded interpretation.

There is no way of checking Professor Konstantinovsky's cases in official Soviet reports, since the only such reports published are those of the Supreme Court of the USSR, and the cases in this volume never went beyond the Supreme Court of the Ukrainian Soviet Socialist Republic. I can say, however, that they have every appearance of genuineness.

The Plan of the Book

After my first meeting with Professor Konstantinovsky in June 1949 I asked him if he remembered any cases relating to certain points which I was then developing in the preparation of *Justice in Russia.* He sent me interesting reports of several such cases. In September 1949 the Russian Research Center of Harvard University appointed him a research assistant, and in that capacity he from time to time sent reports of other cases which he recollected. In January 1950 I asked him if he would devote the full time available to him for research to a systematic recounting of all the cases which he could remember and which he thought presented interesting examples of Soviet law in action. In response to this request, he sent in during the next nine months over one hundred cases, arranged more or less haphazardly. With the able assistance of Sidney Monas and Paul Horecky, then graduate students at Harvard, and of Mrs. Vera Freund, I have translated the cases, edited them where it was necessary to do so for the sake of clarity, eliminated those cases which more or less duplicated points raised in others or which for some other reason seemed uninteresting, and annotated, arranged, and introduced the remaining fifty-three here presented. The arrangement, therefore, is not Professor Konstantinovsky's—though he is in full accord with it. He has also made certain contributions to the introductions to the different chapters (which will be indicated), has collaborated in the annotations, and has approved the whole.

The plan of the book is to present, first, cases which shed light on the nature of law generally in Soviet Russia, and on the extent to which "stability of laws" has actually been achieved. Entitled "The Struggle for Law," the first chapter includes nine cases relating to Communist Party interference in judicial decisions, influence of important members of the Party, "ideological" considerations motivating Soviet judgments, the extent to which Soviet lawyers represent the interests of their clients, the role of the two lay judges (called People's Assessors) in the three-judge trial court, the removability of Soviet judges. The significance of these cases is discussed in the introduction to the chapter.

Chapter II, "Official and Economic Crimes," focuses on the role of criminal law in maintaining the Soviet planned economic order and keeping officials and workers in line. Professor Konstantinovsky did not have much personal experience in the criminal courts and could only recall the details of a few cases to illustrate this aspect of Soviet law—a number entirely unrepresentative of its importance. (It should be noted, however, that four of the cases in Chapter I and several in Chapter IV also concern official or economic crimes.) However, the few cases presented are of particular interest. One of them portrays the dilemma of the Soviet manager who finds himself in a situation in which he cannot procure materials required for fulfillment of planned production without

going outside the legally authorized channels. Another illustrates the dilemma of hungry bakery workers tempted to organize large-scale thefts of bread. In the introduction to the chapter Professor Konstantinovsky has contributed a discussion of such thefts—a subject of particular interest in view of the heavy sanctions imposed in Soviet law for theft of state property, which until 1947 was in extreme cases punishable by death, and which, with the limited restoration of the death penalty in 1950, has been punished by death in a recent case (December 1952) involving activities of a huge racketeering conspiracy that were considered equivalent to "counterrevolutionary wrecking."

The first two chapters provide a background for the next two, which deal largely with the economic activities of the Odessa Bread Trust. The sixteen cases concerning procurement and supply of goods (Chapter III: "Law and Plan") and the twenty-four cases on labor relations (Chapter IV: "Labor Law") comprise the bulk of the book, as they comprised the bulk of Professor Konstantinovsky's practice. In addition, he has contributed to the introduction to Chapter III a valuable essay on the system of economic administration as reflected in the Odessa Bread Trust, and to the introduction to Chapter IV a brief but revealing analysis of the interrelations of the various groups of workers and supervisors in the trust. Both chapters indicate the role of law in maintaining personal responsibility and incentives in a socialist economy, and in preserving a precarious balance between centralization of planning and decentralization of operations.

A final word concerning the character of the cases. In style they bear a close resemblance to the officially reported cases of the Supreme Court of the USSR. There is not the extensive discussion of legal problems that one finds in most American judicial decisions. The court does not feel constrained to elaborate in detail the reasons for its decision, and it does not compare and analyze previous decisions. The Soviet judicial opinion reads more like a decree than a dissertation. Occasionally, however, the court hands down what Soviet writers call "a decision of principle." Such decisions seem on the one hand to make new law, and on the other to have persuasive if not binding effect upon similar cases arising in the future. They indicate that in spite of the absence in Soviet law (as in continental European law generally) of an express doctrine of precedents, previous judicial decisions are nevertheless remembered and may frequently in fact (though not in theory) control the outcome of subsequent cases that are analogous.

The express legal reasoning of the Soviet judge, not being based on analogy of cases, consists largely in interpreting and analogizing statutes and code provisions. The texts of legislative materials referred to in the opinions are translated or summarized in the footnotes. The reader should be warned, however, that neither from the cases nor from the selections from statutes and codes may he expect more than candid snapshots of Soviet law in various poses. For a more systematic interpretation of the Soviet legal system as a whole, I take the liberty of referring to *Justice in Russia,* to which the present volume, though complete in itself, is intended to be a companion-piece. H. J. B.

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SOVIET LAW IN ACTION

I

THE STRUGGLE FOR LAW

INTRODUCTION

Judging from the narratives of former political prisoners in Soviet labor camps and from reports of the various treason trials in Russia and other Communist countries, one gains an impression of the goddess of Soviet justice with the blindfold removed and the scales weighted heavily in favor of the political interests of the rulers. Of what significance is law and justice when behind the legislators, administrators and judges stand the Communist Party and the secret police?

It seems naïve, however, to suppose that strict legality on the one hand and impartial justice on the other play no role whatsoever in the daily functioning of Soviet society. How could a planned economy operate with any degree of effectiveness without not merely regulations but also some objective standards for the interpretation and enforcement of regulations? How could a social order have any degree of stability or command any support from its members unless there existed some impartial forum for the adjudication of disputes and some outlet for the feelings of justice which exist in all people?

These are not answers, but questions—questions intended to suggest the complexity of what Soviet jargon calls "the situation on the legal front." The phrase suggests the title of this chapter. Law in both senses, as strict legality and as impartial justice, exists in Soviet Russia, but its existence is precarious. It must be defended against assaults from many sides. From certain areas, notably that of political opposition, it is excluded almost entirely. In other areas, notably that of disputes between private individuals over rights of property or contract or liability for personal injury, law occupies most of the battlefield. In still other areas the forces are more evenly matched.

What light is shed on these propositions and metaphors by the cases here presented? Obviously, nine cases, or fifty-three, are not more than "some evidence" of general Soviet practices. They are examples; conflicting examples could undoubtedly be found. The first, the case of Rusakov, is an example of the abuse of the judicial process by a Communist Party organ for political purposes—and of the cautious but effective opposition to such abuse by several persons, including the judge and the regional procurator. The case does not tell how often opposition is raised to such abuse, how often it is effective, or how often the abuse itself is attempted. Professor Konstantinovsky states that this is the only case in his experience of direct interference by a Communist Party organ in the conduct of a trial. Even that statement, however, must be analyzed. It may mean that Communist Party organs do not generally interfere directly in judicial matters; or it may mean merely that they do not (or did not, during the decade from 1931 to 1941) generally interfere directly in the kind of judicial matters with which Professor Konstantinovsky was occupied. If the latter implication is true, there is indicated a high degree of compartmentalization of

activities and knowledge which has great significance for our understanding of the Soviet social order.

The case itself, however, is interesting and important for other reasons. It shows the Odessa Regional Committee of the Communist Party concerned, in the face of a serious bread shortage in Odessa, "to slough off responsibility for bad administration." (We are not told whether it was reprimand from above or adverse public criticism from below, or both, that was feared.) It shows the highest party organ of the region giving orders to the highest governmental organ to find a scapegoat. It shows the Municipal Party Committee ordering the judge to convict and to sentence the chosen victim to five years in a labor camp. But the conscience of the judge is troubled. He himself is without political influence, being only a judge. He turns to the director of the Odessa Bread Trust, the accused's employer, and asks him "as an influential member of the Communist Party" to intervene. The director calls in his most important subordinates for what may be thought of as an informal "meeting of the board." It is decided to resort to the regional procurator, that is, to the municipal prosecutor's superior. The regional procurator is willing to go against the Regional Party Committee, and a way out is found. But perhaps the most interesting part of the case is the closing comment of Professor Konstantinovsky, suggesting that by the release of Rusakov "public opinion" was vindicated. Indeed, the entire case indicates a wide gap between the people and the Party in Odessa in 1940.

In the second case, a different kind of Communist Party influence is suggested (though not demonstrated). In a civil suit for 8,000 rubles back salary, the defendant apparently uses his prominent position in the Party to win his appeal from an adverse decision in the trial court. Again, however, there is resort to still higher governmental authority—in this instance higher judicial authority, through an appeal to the Ukrainian Supreme Court—and higher governmental authority is ostensibly not bound by the machinations of the lower Party organs. The case has many interesting sidelights. The suit is between an individual official and a state business enterprise. The defendant corporation's legal adviser refuses to argue the case, since he believes the claim to be justified. The head of the enterprise argues it himself, and at the initial victory exults prematurely that "Soviet justice came out on top."

The next four cases illustrate a still different sort of threat to strict legality and impartial justice, in which the straight political element is mixed with an ideological element. Mrs. Imertsaki loses the first (though not the last) round of her struggle because her deceased husband had been a White officer. Misha Dresher is initially convicted of "swindling" because he not only concealed his "bourgeois" class origin upon applying for admission to the University, but also continued to have "ties with his parents" after his admission; ultimately he is acquitted on the basis of a change of policy. A judge fears lest too many acquittals may lead "them" to complain that "his class vigilance has weakened," but he is persuaded by counsel that his duty to follow the law comes first. Anti-Semitic agitation is punished as a crime against the State.

The concluding three cases of this chapter have to do with responsibilities of the legal profession, of the lay judges who sit with the professional judge in the trial court, and of the professional judge himself. Of these, the most significant is undoubtedly the last, which shows the summary removal of a judge in direct violation of the provisions of the 1938 Judiciary Act. The judge was removed for acquitting a worker who violated the law against absenteeism.

The case illustrates the paradoxical position of a government seeking to enforce "stability of laws" by illegal means.

Less planned, less rehearsed, less "staged" than many official Soviet activities, judicial trials effectively dramatize the real relationships between the people and the State. From these unofficial reports, as even from many of the officially or semi-officially reported cases, one gains an impression that there are bold litigants and courageous judges and procurators in Soviet Russia, who carry on the struggle for law against the forces of arbitrariness in the Communist Party and in the system itself. At the same time, from the point of view of the Party and the State the cases serve as a testing ground of policy and a growing point of the law.

1. THE CASE OF RUSAKOV

In 1940, during the Russo-Finnish war, Odessa faced great provisioning difficulties, especially with regard to the supply of bread. All bread shops were besieged from morning to night by long queues. At this critical moment, the highest organ of government in the Odessa region—the Regional Executive Committee—decided, in accordance with an order of the Regional Committee of the Communist Party, to find a scapegoat for the hitch in bread supply and thus slough off responsibility for bad administration.

Such a victim appeared in the person of an employee of the Odessa Bread Trust, Z. Rusakov, who was in charge of writing out orders for the supply of bread to state trading organizations. Among his duties was the writing of orders for "spoiled" bread to be used as fodder for horses of the State Transport Coöperative. These orders Rusakov wrote by authorization of the Regional Trade Division, the highest regional institution for the regulation of internal trade. The spoiled bread was sold at fifty kopecks per kilogram, a price established by the People's Commissariat of Food of the USSR. In all of 1940, the State Transport Coöperative received not more than two tons. The population of the city—over 600,000 people—consumed from 225 to 240 tons of bread daily.

Criminal proceedings were instituted against Rusakov on the ground that in supplying spoiled bread for horse fodder, rather than for sale to the population via trading organizations, he had created a crisis in the city, a crime under Article 97 of the Criminal Code (abuse of authority).[1] The absurdity of this accusation was more than obvious. An investigation was nevertheless completed, and Rusakov brought to trial.

Two days before the court was scheduled to meet—in a demonstration trial at the club of the bakers' union[2]—the judge conducting the trial came to see the director of the trust and held a private conference with him. The judge, point-blank, asked the director, as an influential member of the Communist Party, to help him. The judge said that he himself was convinced of Rusakov's complete innocence, but that he had an order from the Municipal Party Committee to sentence Rusakov to five years' deprivation of liberty. This meant, actually, exile to a labor camp, since deprivation of liberty for over three years was served in labor camps. The judge, realizing that he would have to decide the case contrary to the dictates of his conscience, and sentence an innocent person, asked the director of the trust to do everything in his power to save Rusakov. The director of the trust, fully realizing that Rusakov was simply a scapegoat for the sins of others, and that nothing could be hoped for from the

trial, invited the chief legal adviser, the chairman of the local factory committee, and the secretary of the party organization of the trust, to his office for a consultation.[3] It was decided to contact the regional procurator and to try once again to have the case discontinued.[4] With great difficulty these people managed to get an appointment with the regional procurator, and they persuaded him to put an end to this scandal. As a result of this consultation, the regional procurator told the municipal procurator who was prosecuting the case against Rusakov to consent to a motion for postponement of the case and for a new investigation. The judge and Rusakov's attorney were informed of this decision.

The next day the judge, in the presence of the assembled bakery workers (about one thousand men), granted a motion by counsel for the defendant to postpone the hearing of the case and to order a new investigation with the consent of the procurator.

The next month the war with Germany began; in July 1941 all files of the Odessa courts and of the procuracy were burned.

Rusakov, his innocence acknowledged by the judge, the procurator, and public opinion, remained at liberty.

2. BANT *v.* THE ODESSA REGIONAL OFFICE OF GRAIN SUPPLY

Bant, an official of one of the Odessa branches of the People's Commissariat of Supply of the USSR, had been commissioned by the chairman of the Odessa Regional Office of Grain Supply (*Zagotzerno*) to carry out a very complex and responsible operation which involved directing the trans-shipment of cargoes of grain arriving at the port of Odessa and addressed to the Odessa Regional Office of Grain Supply.[5] Bant agreed to do the job, which took about eight months. He carried out the assignment brilliantly and the grain reached its destination. Instead of paying an honorarium for his services, however, the chairman of the Regional Office issued a directive in which he expressed his thanks to Bant, explaining that, since Bant worked in the same building in which the Regional Office of Grain Supply was located, and since his office and that of Grain Supply were both subject to the jurisdiction of the same institution, the Committee of Procurement of the USSR, Bant had been obligated to carry out the assignment without remuneration. Bant did not agree, and brought a claim in the Odessa People's Court for 8,000 rubles against the Odessa Regional Office of Grain Supply.[6]

The legal adviser of Grain Supply understood very well how justified Bant's claim was and refused to plead the case in court. Instead, the chairman of the Regional Office himself appeared in court. The court decided in favor of Bant. The Regional Office of Grain Supply appealed the case to the Odessa Regional Court. On appeal, there appeared to be no doubt that Bant had a legal right to remuneration, and from the remarks of the president of the court, the associate judge who reported the case, and the procurator,[7] it seemed quite clear to all present that the appeal of Grain Supply would be quashed. It is therefore impossible to describe the amazement of Bant's lawyer when, appearing three days later at the office of the Regional Court, he learned that the decision of the People's Court had been reversed and Bant's claim rejected.

Bant suspected strongly that the chairman of Grain Supply, a quite im-

portant member of the Communist Party in the city, had approached the Regional Committee of the Communist Party and that the members of the Regional Court had been influenced to pronounce a decision against their own persuasion—since their views to the contrary had been clearly expressed during the argument on appeal. This suspicion was increased when some days later the chairman of Grain Supply called a conference of his administrative employees at which he condemned the lawyers of the Regional Council of Trade Unions who had supported the "self-seeking" demands of Bant and added: "It is true I am not a trained lawyer, but I got what I wanted; my own chief legal adviser and Konstantinovsky, who supported the grabber, lost the case and once again Soviet justice came out on top."

It was then decided to approach the procurator of the Ukrainian Soviet Socialist Republic with a request to have the case sent to him for protest before the Ukrainian Supreme Court.[8] This the Ukrainian procurator consented to do, and the Supreme Court set aside the decision of the Regional Court, giving judgment for Bant. However, the president of the Ukrainian Supreme Court did not agree with this decision and protested it to the Plenum of the Ukrainian Supreme Court, which in turn did not agree with the protest of its president and left the decision of the Supreme Court in force—that is, decided the case finally in favor of Bant.[9]

3. THE CASE OF MRS. IMERTSAKI

Mrs. Imertsaki, a middle-aged widow, worked as bookkeeper in the "educational combine" of the Odessa Bread Trust.[10] With her daughter, a school girl, she occupied one room of a two-room flat. It was necessary to go through her room in order to reach the second room, in which there lived a Communist Party worker of some authority, who attempted systematically and by every means to force Mrs. Imertsaki to move out of the room she occupied. With this object in mind, he behaved in such a way as to create conditions quite impossible for joint habitation of the flat.

Mrs. Imertsaki asked the local trade-union committee of the educational combine to help her by setting up a laquered partition in her room, since the other inhabitant, not in the least concerned that the lady and her young daughter lived there, took the liberty of bringing women from the streets up to his room at night. The union local readily agreed to help by financing the setting up of a partition. The other lodger, however, would not permit the partition to be set up. The regional committee of the bakers' union requested the chief legal adviser of the trust to help Mrs. Imertsaki and to bring suit in court in order to obtain a legal resolution of this dispute. Meanwhile, the situation in the communal flat had become so unbearable that on the eve of the trial Mrs. Imertsaki attempted to commit suicide.

The People's Court granted Mrs. Imertsaki's petition.

There followed on the part of the lodger in question an appeal to the Regional Court, which reversed the decision of the People's Court and dismissed the case, referring in its decision, among other things, to the fact that Mrs. Imertsaki had been the wife of a White officer. The procuracy refused to protest this decision to the Supreme Court.

Encouraged by the Regional Court's decision, the lodger released his inhibitions still further and began to molest Mrs. Imertsaki's daughter. It was quite

impossible to find even the smallest coop of a room elsewhere, and Mrs. Imertsaki had to go on living under the onerous conditions of the transit room. There followed another attempt at suicide.

Strange as it may seem, the Yezhov purge of 1938 helped set the matter straight.[11] At about this time practically the entire staffs of both the Odessa Regional Court and the Odessa Regional Procuracy were purged as "enemies of the people." (Some committed suicide; as, for example, the regional procurator Turin, who, when he was summoned by the NKVD, hanged himself in the lavatory of the procuracy.)

A new opportunity was thus presented to petition the Regional Procuracy to aid this unfortunate woman. Now the procuracy readily agreed and protested the case to the Supreme Court. Among other things, it appeared that the records of the case had disappeared completely from the court's archives. On the basis of a ruling of the Ukrainian Supreme Court, Mrs. Imertsaki was permitted to bring suit all over again in the People's Court, and in both instances (in the People's and Regional Courts) her claim was now satisfied.

4. THE CASE OF MISHA DRESHER

In 1934, a year before the university reforms which canceled a whole set of restrictions on those entering higher educational institutions ("Children need not answer for the sins of their fathers"),[12] Misha Dresher, upon entering the Odessa University, failed to reveal in his application that his father had been a tradesman. Instead he stated falsely that his father had been a shop assistant. Two years later, when Dresher was studying in the third form, the secretary of the District Committee of Komsomols[13] exposed him before the rector of the university, revealing his real origin and describing him, incidentally, as a "class enemy" who during the civil war had come out against the Red Army and had even busied himself with speculation, though actually the youth in question was no more than five years old during the civil war in the Ukraine. On the basis of this information, Dresher was excluded from the university and a criminal case of false pretenses ("swindling") was invoked against him, under Article 180 of the Criminal Code.[14]

At the trial in the Odessa People's Court the accused pointed out that he had long since liberated himself from any financial dependence on his father, that he had washed away the "shame" of his origin by active participation in social service ever since his school days, that he had now broken with that milieu into which it was hardly his fault to have been born. But the People's Court, turning a deaf ear to all the protestations of the accused, found him guilty, since there was at hand a simple and easy opportunity to tag him as an "alien element" and apply the "fashionable" Article 180. The court took as a ground for its decision the fact that he had had "ties with his parents" (by "ties" was apparently meant the fact that on occasion he permitted himself to write letters to his mother).

He was sentenced to compulsory labor tasks for a period of six months.[15] On appeal, the conviction was affirmed by the Regional Court.

The case was then brought before the Ukrainian Supreme Court on protest of the president of that court. The Supreme Court handed down the following decision: As is apparent from the facts of the case, Dresher actually did conceal his social origin; but this did not provide grounds in the given concrete instance

for bringing him to trial for false pretenses under Article 180 of the Criminal Code, because his aim had been, after all, to study and not to derive material gain. The reason for restricting persons of non-proletarian origin from entering higher institutions of learning is to prepare cadres of specialists from working-class youth or those of working-class origin. Dresher had participated in the Youth Communist movement, had been a correspondent of Pioneer and Komsomol newspapers, had led social work, and had labored from his early youth. He is, essentially, a toiler, and the fact that he happened to be born into the family of a small tradesman provides grounds neither for his conviction nor for his exclusion from the university where he had been studying for some time. Formally, there is, of course, this deed—the fact that he included false information in an official report made to a state institution. This would support administrative action by the university authorities. The statement that he had ties with his parents is supported only by the fact that he corresponded occasionally with his mother, but no indication of material support from his parents has been established.

On the basis of these considerations, the Supreme Court reversed the judgment of the People's Court and the Regional Court and dismissed the case, but admonished Dresher under Article 43 of the Criminal Code.[16]

5. A CLASS-CONSCIOUS JUDGE

The cashier of the Third Odessa Bakery, Mr. Shargorodskii, was sent by the management to collect the payroll of 11,000 rubles from the local office of the State Bank. He received the correct sum at the bank, packed it into his portfolio, and took the trolley back to his place of work. On the way, in the overcrowded car, some malefactors who apparently had been following him and knew that he had received a large sum of money at the bank slashed his portfolio with a razor, took out part of the money, and vanished. When the cashier arrived at the bakery, he noticed the loss of nearly 6,000 rubles. He informed the treasurer that the money was missing.

The plant manager informed the procuracy of all that had happened, and the procuracy brought charges against Shargorodskii, accusing him of neglect of his official duties under Article 99 of the Ukrainian Criminal Code,[17] as a result of which the state had been damaged to the extent of some 6,000 rubles.

When the director of the trust heard of the charges against Shargorodskii, he arranged legal aid for him, taking into account that the cashier had worked in the bread industry for many years, that he enjoyed everyone's full confidence, and that he had been an active trade-unionist. The trade-union representatives shared the point of view of the manager. Therefore, the chief legal adviser of the trust was commissioned to act as defense counsel in court, for which purpose he was given special authorization by the trade union.[18]

The Shargorodskii case was the fourth to be heard at that session of the People's Court. In the first three cases, the court had pronounced acquittals. In defense of Shargorodskii it was argued to the court that the loss incurred by the plant ought to be borne by the administration of the plant because it had failed to provide Shargorodskii with means of transportation to get the money from the bank to the plant. Instead, the administration of the plant had permitted Shargorodskii to use the trolley for this purpose, where the risk of theft, one might say, was more than likely. Moreover, Shargorodskii had repeatedly

requested Mr. Dolgosheenko, the plant manager, to provide him with the management's car to pick up the money. All this was confirmed by witnesses, among others the plant manager himself. Indeed, the considerations pointed out by the defense were so convincing that an acquittal seemed certain to all attending the session.

Before retiring with the two people's assessors for consultation,[19] however, the judge said to the defense counsel in a subdued voice:

"Comrade legal adviser, how can I acquit this man when I've already acquitted three before him? You know, they won't pat me on the head for that. They'll say, 'He's pooped; his class vigilance has weakened. . .' I, too, have a 'plan.' "

So the legal adviser of the trust had to point out to the judge that his duty was to decide the case according to conscience and not according to "plan."

After a prolonged conference the court handed down an acquittal with a separate opinion appended by the judge.[20] The protest of the procuracy against this acquittal was quashed by the Odessa Regional Court.

6. A CASE OF ANTI-SEMITISM

In 1940 a demonstration trial took place at the Odessa Regional Court. Eight bakery workers were accused of having aroused animosity among their fellow-workers against members of national minority groups.

It was established at the trial that in several enterprises of the Odessa Bread Trust anti-Semitic feelings had spread among some workers and were being manifested in the baiting of Jewish workers. These persecutions started with the introduction of technical production improvements which the anti-Semites termed "inventions of Jews." These workers were particularly aroused by a series of technical suggestions of the chief engineer of the Second Bakery, Michelev, and they asserted that such devices, far from being of any benefit to the workers, would only lower their wages.

When the Jewish workers requested that a stop be put to these insults, and when Russian fellow-workers made similar representations, the anti-Semites became even more threatening.

Considering the social danger involved in anti-Semitic actions which aim at arousing national animosity, and having considered the degree of guilt of each individual defendant, the Regional Court judged their acts according to Article 59[2] of the Criminal Code,[21] and passed the following sentences: The principal instigator of the baiting, a woman, was sentenced to deprivation of freedom for three years with loss of civil rights for two years;[22] three other workers to deprivation of freedom for one and a half years with loss of civil rights for two years; and the remaining defendants to compulsory labor tasks at their place of work for one year, with 25 per cent of their monthly pay to be withheld.[23]

On appeal, the Ukrainian Supreme Court affirmed the verdict and sentence, stating that manifestations of "hooliganism" and anti-Semitism present a grave social danger which must be met by the courts with strictness.

7. A LAWYER'S UNPROFESSIONAL PRACTICE

The Transport Office of the Odessa Bread Trust brought suit in the labor session of the People's Court against a former worker named Beregula for the price of special clothing which had been issued to him and which he had allegedly failed to return when dismissed. Beregula entrusted the defense of his interests

to Mr. Basin, the legal adviser of the local transport workers union.[24] At trial Beregula did not himself appear in court. On the basis of the evidence presented by the Transport Office, Mr. Basin acknowledged in full the validity of the claim and the court therefore gave judgment for the plaintiff.

Beregula appealed from the decision of the People's Court. He asked Mr. Basin to represent him again before the appellate court, but Mr. Basin declined to do so.

The Odessa Regional Court upheld the decision of the People's Court.

Thereupon Beregula approached the procurator, pointing out that he had not authorized Mr. Basin to acknowledge the claim and that he was in a position to prove that he had returned the special clothing. The procurator protested the decision to the Ukrainian Supreme Court which handed down two decisions—one relating to the issue in the case, the other a special ruling on the conduct of Mr. Basin.[25]

In the first ruling the Supreme Court stated that the decision of the trial court was erroneous because it was based on the acknowledgment of the claim by the labor union representative although he was not authorized by Beregula to make such acknowledgment. The lower court had entirely overlooked the fact that the representative of the trade union, having no explicit authorization from the party whom he represented, had no right to terminate a lawsuit by settlement, renounce a claim in full or in part, acknowledge a claim, undertake any commitments, and so forth. For such transactions a lawyer requires a special power of attorney from his client. In general, the Supreme Court stated, a trade union representative advances the views of the trade union in a given case, and without special authorization he does not act as the attorney of the plaintiff or the defendant. From this it followed that the trade union representative in the present case displayed complete ignorance of his rights and duties in court, and he overstepped the rights of a lawyer accorded to him by Article 18 of the Code of Civil Procedure.[26] Since the decision of the court was based on the acknowledgment of the claim by an unauthorized person in the absence of the defendant, it could not be left in force.

In its special ruling the Supreme Court declared that it appeared from the facts of the case, first, that Mr. Basin displayed complete ignorance of Article 18 of the Code of Civil Procedure; second, that he transgressed the powers of a trade union representative concerning the representation in court of trade union members; third, that although he was expressly authorized by the trade union to represent Beregula in court, he did not take part in the appellate proceedings, in spite of the fact that his acknowledgment of the claim constituted the principle ground for filing an appeal against that decision.

Consequently, the Supreme Court ruled that the Odessa Regional Committee of local transport workers should be notified of the incompetence of their legal representative, as shown in the course of his representation of Beregula's interests, so that they might impose a fine on Mr. Basin, and also that the matter should be brought to the attention of the College of Lawyers, if Mr. Basin was a member of that body.[27]

8. THE JUDGE AND THE ASSESSORS

The Fourth Plant Administration of the Odessa Bread Trust brought suit against a watchman of the fire-protection squad for the price of a special uniform he had failed to return when he was dismissed from his job.

The case was tried in a labor session of the Odessa People's Court. The people's judge wrote a decision for the plaintiff giving judgment for the full amount of the claim. However, both of the people's assessors disagreed with the judge, contending that certain counterclaims made by the defendant during the trial had to be taken into account. The people's judge, in outright violation of the rules of civil procedure, submitted his decision to the people's assessors for their signature, and they signed it, although they also appended a separate opinion of their own to the decision.

The defendant appealed on the ground that the decision was irregular, but the Odessa Regional Court held that it was valid, since it had been signed by all the members of the court. On the defendant's application, the Procurator of the Ukrainian Soviet Republic protested the decision to the Supreme Court of the Republic, arguing that the case showed a patent disregard of the rights of assessors, tending to foster among them the notion that they are nothing more than useless furniture.

The Supreme Court examined the case and handed down the following decision: The position of the procurator is undoubtedly correct, since it is quite impermissible for a people's judge to force the people's assessors to sign a decision with which they do not agree and to make it necessary for them to write a separate opinion. Decisions of a trial court are determined by a majority vote,[28] so that the separate opinion of the people's assessors in this case ought to have the force of a judicial decision. The appellate court could not simply affirm this unilateral "decision." If it disagreed with the opinion of the two assessors, it should have remanded the case for a new trial. But in view of the clear-cut facts of the case, it could have itself determined the sum to be exacted from the defendant, offsetting the amount of the counterclaim as fixed by the people's assessors.[29] Therefore, the Supreme Court reversed the decisions of the Labor Court and Regional Court and gave judgment for an amount corresponding to that which was authorized by the separate opinion of the people's assessors.[30]

9. THE REMOVAL OF A LENIENT JUDGE

By an edict of June 26, 1940, workers and employees were made criminally responsible for being late more than twenty minutes and for unwarranted absence from their jobs. The law, still in force, provides that lateness over twenty minutes is to be punished by not more than a fine of 25 per cent of the worker's or employee's pay each month for six months ("compulsory labor tasks at his place of work"). In a supplementary instruction the Supreme Court of the USSR prescribed it as obligatory for all judicial organs of the USSR to impose the *maximum* penalty provided for in the edict.

Soon after the edict had been issued, the people's judge of one of the workers' districts of Odessa, Mrs. Morozova, in trying a criminal case involving a charge against an Odessa factory worker who had been more than twenty minutes late to work, took a number of circumstances into consideration and pronounced an acquittal. The district procuracy protested the decision to the Odessa Regional Court, which reversed it, and sentenced the accused worker to the maximum penalty provided for by the edict of June 26.

Mrs. Morozova was promptly removed from her job for "not being able to cope with her work" and "for failing to maintain constant vigilance."[31]

Notes

1. RUSAKOV

1. Article 97 of the Criminal Code of the Ukrainian Socialist Soviet Republic states: "Abuse of authority or of a position of service—that is, acts of an official which could be committed only by virtue of his position of service, and which were not evoked by considerations of official necessity, and which resulted in a clear violation of the true work of the institution or enterprise, or caused it property damage, or entailed a breach of social order or of rights and interests of private citizens protected by law, and if committed by the official systematically or for mercenary considerations or because of other vested personal interests, or if they could obviously (even though they did not in fact) entail weighty consequences for the official—shall be punished by deprivation of freedom for not less than six months."

A note added to the article defines as an official any person occupying a permanent or temporary office, or having official rights, duties, or powers, in a state institution or enterprise or in any organization exercising rights, duties, or powers in the realization of economic, administrative, juridical, educational, or other public tasks.

Article 97 of the Ukrainian Criminal Code corresponds to Article 109 of the Criminal Code of the Russian Soviet Federated Socialist Republic (RSFSR). The Ukrainian codes in general are modeled on the Russian codes, differing somewhat in wording and enumeration.

2. In criminal cases involving important issues, the courts may hold "demonstration trials" in the enterprises or collective farms where the crimes were committed. Such trials are conducted before large audiences and their purpose is frankly educational and "parental." See Berman, *Justice in Russia,* pp. 208–209.

3. The trust's chief legal adviser was, of course, Professor Konstantinovsky.

The factory committee is the lowest organ of Soviet trade union organization. It comprises workers and employees (including the managerial staff) of the production unit. Among its functions are: raising the productive capacity of the plant, supervising the observance of labor legislation, and representing the material and cultural interests of the workers in various capacities. See below, Chapter IV.

The Communist Party, with some six million members, is a pyramid at whose peak is the Presidium and at whose base are the so-called primary party organs in individual enterprises, collective farms, and social or state institutions. In between are party committees on the various territorial levels, culminating in the Central Committee of which, formally, the Presidium is an arm. The secretary of a particular party organization is its chief official.

4. The Procurator General is appointed by the Supreme Soviet of the USSR and appoints in turn procurators of republics, territories, and regions; in addition he confirms the republican procurator's appointments of area, district, and municipal procurators. According to the Constitution, the organs of the Procurator's office perform their functions independently of local organs and are subordinate solely to the Procurator General of the USSR. The regional procurator watches over the system of administration within the region and sees to it that regional executive and administrative bodies do not overstep their legal authority. He has the right to "protest" any act which in his opinion violates the existing law, to the executive-administrative organ immediately superior to the body responsible for the alleged violation. With regard to the judicial system, he not only acts as public prosecutor but also watches all civil proceedings within his jurisdiction and may initiate or enter any lawsuit at any stage on either side; he also may appeal, or "protest," any decision, civil or criminal, of any court of the region; he may move to reopen any case after a decision has been handed down. See below, note 8. The procuracy maintains a special section to which anyone may address a letter or telegram if he thinks he has been unjustly arrested or convicted. On the role of the procuracy and on its historical sources in earlier Russian law, see Berman, *Justice in Russia,* pp. 168 ff.

2. BANT

5. The People's Commissariat of Supply (since 1946 called Ministry of Supply) administers the distribution of food and other products throughout the USSR. The particular branch in which Bant worked was subordinate to the Committee of Procurement attached to the Council of People's Commissars (since 1946 called Council of Ministers) of the USSR. The Odessa Regional Office of Grain Supply was charged with the allocation and procurement of grain in the Odessa Region; it, too, was subordinate to the Committee of Procurement.

6. Bant applied for aid to the legal section of the Odessa Regional Council of Trade Union, whose chief legal adviser, Mr. R., entrusted the case to Professor Konstantinovsky, as a member of the legal section of the Odessa House of the Learned. The House of the Learned was a club of professors, assistant professors, and instructors of all institutions of university rank in the city of Odessa; its legal section consisted of three jurists, including Mr. R. and Professor Konstantinovsky. The legal section of the House of the Learned rendered legal aid gratis, by way of social work, to scientific workers and their families.

7. In appellate proceedings one member of the three-judge court is charged with the preparation of the case; he reports to the court on the proceedings and judgment in the trial court, and on the grounds for appeal. On the procuracy, see above, note 4.

8. Normally there are two instances in Soviet civil and criminal procedure—a trial (usually in the People's Court) and an appeal to the next highest court (usually the Regional Court). The appeal is on motion of one or both parties, and is argued before the appellate court by the parties (generally through their lawyers); however, the appellate court is not bound by the grounds of appeal offered by the parties, and it may review the entire case as presented by the record below. In addition to these two instances, the case may be reviewed by the supreme court of the particular republic in which it has come up and again by the Supreme Court of the USSR (which is the only federal court). The proceedings in the republican and all-union supreme courts are not, strictly speaking, "on appeal," but are "by way of supervision"; they are initiated by the "protest" of the republican or all-union procurator or of the president of the republican or all-union supreme court. The parties are absent and the procedure is not public. See Gsovski, *Soviet Civil Law,* I, 836–909. However, in practice the "protest" is usually based upon a letter from the lawyer of the defeated party stating grounds for review.

Mr. Konstantinovsky writes that in almost all the cases with which he was connected the party defeated on appeal then applied to the procurator or to the president of the supreme court (often through a superior organization such as the Chief Administration for Bread or the Regional Council of Trade Unions) with a request to protest the appellate decision; at the same time the defeated party would present to the procuracy or the president a draft or a petition for review by way of supervision, which draft needed only to be signed by the procurator or the president.

Mr. Konstantinovsky adds: "The procedure in the first two instances goes rather fast. However, the party who has obtained a 'final' decision in his favor and has even received a writ of execution is not at all sure that the case has finally been decided. The supervisory proceedings may sometimes drag out for years." Likewise, in criminal cases a person whose sentence has been affirmed on appeal begins to serve it immediately, although it may be protested by way of supervision and ultimately reversed.

9. In addition to the procedures described in the preceding note, there may be another review by the "plenum" of the supreme court (both of the republic and of the USSR). The supreme courts consist of separate boards or "colleges" for civil appeals and criminal appeals, and, in the case of the Supreme Court of the USSR, for military appeals and appeals from transport and labor camp courts. Periodically all the members of the supreme court meet as a whole in a plenary session, with the procurator, to issue instructions for general court practice and also to review cases presented by the president or by the procurator. See Gsovski, *Soviet Civil Law,* I, 836–909.

3. MRS. IMERTSAKI

10. An educational combine comprises several educational institutions under one overall administration. The Odessa Bread Trust included such an organization, which had charge of a technical training school and an apprenticeship school as well as courses for the improvement of the qualifications of the workers and employees of the trust.

11. During the violent Yezhov purge—named after the then head of the People's Commissariat for Internal Affairs (NKVD)—a considerable number of functionaries and members were expelled from the Communist Party. The purge had its climax in the trials of some of the most prominent Soviet leaders. Yezhov was himself ultimately purged.

4. MISHA DRESHER

12. This quotation is from a speech made by Stalin in 1935, which marked an important phase in the removal of discriminatory restrictions against members of the so-called bourgeoisie and their children.

13. The Komsomol, or Young Communist League, is an auxiliary youth organization of the Communist Party, consisting of young people between the ages of fifteen and twenty-six. Its organizational structure is patterned on that of the Communist Party, with primary party organs in industrial enterprises, collective farms, and educational and other institutions, upon which base is built a pyramid of city or village, district, regional, and republican committees, each elected by the next lower committee.

14. Article 180 of the Ukrainian Criminal Code (resembling Article 169 of the RSFSR Criminal Code) states: "Swindling, that is, acquiring property or property rights from mercenary motives, as a result of deception or malpractice, shall be punished by deprivation of freedom up to two years or by compulsory labor tasks. Swindling which results in damage to a state or social institution shall be punished by deprivation of freedom up to five years with or without confiscation of all or part of property."

15. Compulsory labor tasks are a form of punishment under Soviet criminal law consisting of the deduction each month, for a period not exceeding one year, of a certain percentage of the criminal's pay while he remains at his normal occupation. In rare instances he may be transferred to another job. This form of punishment is regulated in the Ukrainian Soviet Republic under Articles 179–197 of the Ukrainian Corrective Labor Code. Supervision of such labor tasks is given to a Bureau of Compulsory Labor which is constituted in each district (*raion*) and consists of a member of the district executive committee as chairman, the manager of the administrative division of the district executive committee, the manager of the local division of communal economy, the district people's judge, the captain of the district militia (police force), and a representative of the district committee of mutual aid (a social organization which renders aid to persons serving their sentences). The bureau supervises the criminal's registration and transfer, and his parole. Persons who have no job at the time they are sentenced are directed by the bureau to work either in prison enterprises or in ordinary enterprises and institutions. Such persons must report to the bureau regularly, and in any case at least once a week. Persons who continue to work at their normal jobs must report only as summoned.

16. Article 43 of both the Ukrainian and the RSFSR Criminal Codes states: "Admonition shall be applied by the court only in cases of a verdict of acquittal, if the court considers that the conduct of the acquitted person nevertheless gives grounds for apprehension that he will commit crimes in the future."

For an example of a 1929 case very similar in its facts but decided by the Supreme Court of the RSFSR against the student, on the basis of the earlier policy, see the case of Veitsman, translated in Hazard and Weisberg, *Cases and Readings on Soviet Law* (mimeographed, 1950), p. 82.

5. A CLASS-CONSCIOUS JUDGE

17. Article 99 of the Ukrainian Criminal Code, based on Article 111 of the RSFSR Criminal Code, states: "Non-use of authority, that is, the failure of an official to carry out actions which are obligatory for him by virtue of his position, provided that the conditions stated in Article 97 are present, or provided that there is a negligent attitude toward the position entailing delay, tardiness in carrying out or accounting for activities, or other omissions, shall be punished by deprivation of freedom up to three years, or compulsory labor tasks."

For the conditions stated in Article 97, on abuse of authority, see above, note 1.

18. Article 50 of the Ukrainian Code of Criminal Procedure, corresponding to Article 53 of the RSFSR Code of Criminal Procedure, states: "The following may participate in a case as defenders: members of a college of defenders, near relatives of the accused, authorized representatives of state institutions and enterprises and also of the All-Union Central Union of Coöperatives and of other professional and social organizations. Other persons may be allowed only with special permission of the court which has jurisdiction of the particular case."

Mr. Konstantinovsky states that the legal adviser of the trust was commissioned to perform this service "as a member of the trade union, by way of trade union discipline." However, he adds, he would refuse such a commission if the interests of the union conflicted with those of the trust itself. In court, Mr. Konstantinovsky emphasizes, the legal adviser of the trust represented the interests of the accused and not of the union as such.

19. The Soviet trial court consists of one professional judge and two laymen, called people's assessors. Decision is by majority vote. See Case 8, "The Judge and the Assessors."

20. Any member of the court may write a separate opinion and append it to the record, as in this case. This is rarely done, however. See Case 8, "The Judge and the Assessors," note 28.

6. A CASE OF ANTI-SEMITISM

21. Although in most cases the Regional Court is a court of appeal, it has original jurisdiction to try certain important types of criminal cases.

Article 59[2] of the Ukrainian Criminal Code, corresponding to Article 59[7] of the RSFSR Criminal Code, states: "Propaganda or agitation directed toward the incitement of national and religious enmity or diversity, as well as the spreading or preparing and keeping of literature of such a character, shall be punished by deprivation of freedom for a period up to two years.

"These acts under circumstances of war or during mass disturbances shall be punished by deprivation of freedom for a period of not less than three years and total or partial confiscation of property, increased under especially aggravating circumstances up to the highest measure of social defense—shooting with confiscation of property."

Article 58[1] of the Ukrainian and RSFSR Criminal Codes, dealing with counterrevolutionary crimes generally, includes among such crimes "any act directed to the . . . injury or weakening of the . . . basic economic, political and national [ethnic] gains of the proletarian revolution."

22. On deprivation of freedom, see below, p. 24, note 4. Another penalty a Soviet criminal court may impose is the temporary loss of civil rights, such as the right to vote, to be elected to office, and other rights inherent in citizenship.

23. See Case 4, "The Case of Misha Dresher," note 15.

7. A LAWYER'S UNPROFESSIONAL PRACTICE

24. In labor cases, the trade union local supplies its members with the free services of its lawyer.

25. Soviet courts may issue special rulings not relating to the issues in the case but referring to misconduct of officials revealed by the evidence in the case. These rulings are passed on to the administrative authorities and may lead to disciplinary action. See Berman, *Justice in Russia,* pp. 215–216.

26. In any civil lawsuit, a party's representative acting in court must have a power of attorney in the form prescribed by law, authorizing him to take any procedural steps except those for which the law requires an explicit authorization. Article 21 of the Ukrainian Code of Civil Procedure, corresponding to Article 18 of the RSFSR Code, states: "The power [of attorney] gives the representatives the right to take any procedural steps, except to terminate the action by a settlement, to submit the dispute to arbitration, to abandon claims in full or in part, to transfer the power to another person, to receive money or property. The aforementioned rights of the attorney must be specifically provided for in the power. Allegation that a document submitted by the adversary is forged may be pleaded only under a specific power issued for the given case."

27. Most Soviet lawyers belong to so-called "colleges," which are described by the statute on the legal profession of August 16, 1939, as voluntary associations of persons engaged in the exercise of the legal profession. Such colleges, organized on district, regional and republican levels, operate under a presidium which wields certain disciplinary powers over members of the college. Any complaints, or special rulings of courts, bringing to the attention of the presidium instances of violation of professional duties by a lawyer, must be investigated by the presidium, which may take the following disciplinary measures: reprimand, rebuke, removal from practice for a period up to six months, or expulsion from membership in the college of lawyers. The lawyer may appeal to the Ministry of Justice of his particular republic.

8. THE JUDGE AND THE ASSESSORS

28. Article 195 of the Ukrainian Code of Civil Procedure, corresponding to Article 174 of the RSFSR code, states: "Judgment shall be made by a majority vote. None of the judges may abstain from voting. Each judge may attach to the record his dissenting opinion. . ."

29. Article 277 of the Ukrainian Code of Civil Procedure, corresponding to Article 246 of the RSFSR code, states: "If the appellate court considers the appeal (protest) unfounded, it shall leave it without consequences. If the appellate court finds the appeal (protest) well founded, it shall reverse the decision in full or in part, and shall discontinue the case if it is not subject to judicial decision or in the absence of a right to sue, or shall remand it for a new trial in full or with respect to the reversed part, in another court or in the same court with different judges. The appellate court may itself modify the decision and not remand the case for retrial, provided the decision contains errors arising from the incorrect application

of a law and these errors may be corrected on the basis of the decision itself and the facts established in it. The appellate court may also modify the decision of a lower court if there is an apparent contradiction between the decision and the factual circumstances of the case as established by the lower court.

30. In commenting on this case Mr. Konstantinovsky writes: "According to the law on the judiciary, the two people's assessors are members of the court with the same rights as the presiding people's judge. In practice, however, their role is a quite modest one, and on occasion they are reduced to mere 'furniture,' as the procurator in the present case characterized them. This is due in part to the fact that they are laymen chosen from the locality and in many cases are not acquainted with even the most elementary rules of law. The more complicated the legal problem before the court, the more helpless are the people's assessors and the more they are forced to rely on the people's judge who, although he is not always a lawyer by education, is in any case a man of experience who is occupied daily in deciding lawsuits. In my personal experience there were trials during which the people's assessors did not propose a single question but sat there quite apathetically, responding to nothing that went on before them. There were cases in my practice in which the judge handed down a decision without even for appearance's sake nodding his head to either of the people's assessors to give the impression that he consulted them before handing down a decision. And the people's assessors accepted this as their due, although it was the grossest violation of the judicial process and of their rights.

"A second reason for the modesty of the role of the people's assessors is the overloading of the people's courts. In Odessa the people's courts sometimes examined as many as fifty cases a day. With seven or eight hours of working time, and allowing for the fact that some cases were set aside for failure of the parties to appear or on petition of the parties or for similar reasons, there was an average of about fifteen minutes for the disposal of each case. The judge would take the cases home with him and write out his decisions in the evenings; then several days later he would bring them to court for the signature of the people's assessors. In the rush some decisions were issued by mistake without the signature of one or both of the people's assessors, with the result that they lacked validity; when this was discovered on appeal, the cases had to be sent back for a new trial.

"In the present case there is a curious twist: the Odessa Regional Court considered that once the decision of the court was signed by the people's assessors it acquired validity. It was only the Supreme Court which got onto the right track by considering the 'opinions' of the people's assessors to be the judicial decision, rather than the 'decision' of the people's judge."

9. A LENIENT JUDGE

31. According to Article 17 of the Judiciary Act of 1938, judges may be removed from office only by recall by their constituency, or by a criminal conviction handed down by a court, after proceedings which may be instituted solely with the consent of the procurator-general of a republic and the approval of the presidium of a union republic or of that of the USSR. Mr. Konstantinovsky states that he was told by Mrs. Morozova's husband that she was removed at the order of the Communist Party.

II

OFFICIAL AND ECONOMIC CRIMES

INTRODUCTION

Soviet economic planning has resulted in a vast extension of the domain of criminal law. New types of crimes have been created to protect state property, to deter workers from lateness and absenteeism, to prevent and punish the misconduct of state business managers, to provide sanctions against breach of planning discipline by officials and administrators.

At the same time, planning itself—at least under conditions of scarcity such as exist in Soviet Russia—creates severe temptations for officials and workers to violate these criminal laws. The manager who because of some bottleneck in distribution cannot procure necessary materials through the regular planned channels is often confronted with alternative courses of action, any one of which is illegal: he may stop production (in criminal violation of his planned tasks), or he may deliberately put out products which are defective (in violation of the crime of production of goods of poor quality), or he may seek to procure the needed materials outside the planned channels (in violation of the code provision on "abuse of authority"). In the first case of this chapter, the Case of the Stolen Wire, a manager who had had an excellent record, confronted with this dilemma, chose the third way out. Something quite extraneous brought notoriety to his misconduct and he was severely punished. Under normal circumstances his action would probably have gone unnoticed —so long as his plan was fulfilled.

The temptations and hazards of economic responsibility, as illustrated in the first three cases of this chapter, are matched by other temptations and hazards of ordinary unofficial economic life. The worker who is deprived of consumer goods in the name of planned industrialization is strongly tempted to steal what is at hand—namely, socialist property, declared by Soviet law to be "sacred and inviolable." Despite the severe sanctions against the theft of socialist property, thefts in the factories have been extremely widespread, and manual labor is considered by many to be preferable to clerical work for the reason that one can't eat or wear a pen and ink.

The professional man may have nothing to steal, but it is one of his temptations to take more than the two different jobs allowed him by law. The fifth case in this chapter presents an example of a lawyer who was charged with being legal consultant to twelve organizations at once. His defense had considerable merit; the verdict which was rendered against him undoubtedly reflects a strong policy against such practices.

The cases in Chapter II may be better understood in the light of the following description by Professor Konstantinovsky of thefts of bread from the Odessa bakeries, a problem with which the fourth case is particularly concerned. It may be noted that an outstanding English criminologist has at-

tributed the severity of the sanctions against theft of socialist property "to the emphasis universally laid on the 'we'-feeling, the sense of common ownership, to be found in particular among the younger generation in present-day Russia."* Professor Konstantinovsky reports, however, that stealing in the factories is common and socially acceptable, while stealing the personal belongings of one's neighbor is infrequent and dishonorable. He writes:

There are the most varied ways to misappropriate bread, sometimes by whole truckloads, amounting now and then to sheer virtuosity. At the Second Bakery, the following circumstances assisted these mass misappropriations. When the plant had been built, it had been estimated that its dispatch office had a productive capacity of from eighty-five to ninety tons of bread every twenty-four hours. Bread-baking needs in the mid-thirties demanded an expansion of the city's productive base. In connection with this, the Second Bakery, instead of its projected eighty-five to ninety tons of bread per twenty-four hours, began to bake 140 tons, although the dispatch office's space had not been increased. As a result it was quite impossible to take an inventory of bread in the dispatch office, and the plant's bookkeeping section began to practice means by which the quantity of bread that was sent out by the plant to trading organizations every twenty-four hours was reckoned as the daily baking productivity of the plant, without an actual inventory of how much had been baked and how much sent out.

Therefore, from a formal point of view, there never was a shortage in the Second Bakery's dispatch office. The manager was thereby "freed" from the unpleasant mission of exposing the shortages and transferring the matter to the bread trust's legal division in order to make the packers criminally responsible for obvious shortages in an inventory.

In other enterprises, where actual inventories did take place, a correspondence with the procuracy's organs of supervision usually began after each stock-taking. The majority of criminal cases for the decade 1931–1941 which passed through the trust's legal division were cases dealing with just such shortages. The number of cases in some years was such that the organs of the procuracy and of the judicial investigating organs did all they could to prevent, if possible, any more such cases from reaching the courts.

There was a case, which has simply an anecdotal character, concerning one of the bake-shops of the Fourth Plant Administration. A bread shortage of close to 8000 rubles' worth was exposed. The treasurer of the plant administration and the chief legal adviser of the trust reported the shortage to the procuracy, naming a packer as the guilty party. The procuracy appointed an investigating committee, which, however, with the approval of the treasurer counted the surplus of one kind of bread to fill in the deficiency of another kind. As a result, the shortage in general was paltry, about 200 rubles. Although "operations" of this kind were clearly illegal, the procuracy, when it received the investigating committee's report, wrote a letter to the director of the trust in which it requested that the director impose a disciplinary fine on the treasurer of the Fourth Plant Administration and on the trust's chief legal adviser, who had "approached a 'live' man bureaucratically and who had invoked criminal consequences against this packer without any grounds." The director categorically refused, at first, but began a correspondence in which he made "concessions"

* Hermann Mannheim, *Criminal Justice and Social Reconstruction* (London, 1946), p. 109.

so as not to quarrel with the procuracy. The chief legal adviser prepared an order in which he issued a "warning" to himself and to the treasurer of the plant administration to the effect that they had both acted "bureaucratically" towards a "live" person. It should be noted that subsequent investigating committees did not permit the reckoning of extras to plug shortage gaps.

As a rule, misappropriated bread from the bakeries and bake-shops was sold in the stores of trading organizations, and the proceeds from this bread were divided among the bakery's packers, the dispatching clerks, truck drivers and the management and personnel of the store disposing of the stolen bread. In one case, in the course of prosecuting dispatch office workers, and workers of the bread section of the Odessa Municipal Food Supply Organization, it was established by the court that responsible officials of the trading organization (the secretary of the party organization and the trade union chairman) had had "shares" in the affair.

Experience showed that if a plant's administration, to which the bakeries were subordinate, arranged a mass transfer of the labor force from one bakery to another, the weight-percentage of bread (with regard to the weight of flour used) produced by the bakeries after such a mass transfer invariably rose, and quite frequently even approached the norms set up by the Chief Administration for Bread of the People's Commissariat of Food Industries of the USSR. Some time after a transfer of workers, the weight-percentage usually began to decline again. Therefore, a new reallocation followed. This strange phenomenon, connecting the weight-percentage with the transfer of workers from bakery to bakery, is quite simply explained. A bakery is a small enterprise. It is easy for the workers to conspire among themselves in order to "carry off" and even "cart off" bread. This "leakage" is reflected in the weight-percentage. It is sufficient to transfer the labor force from some bakeries to others in order to "dilute" any particular bakery's collectivity with new members and thus to bring the mass plundering of bread to a temporary halt. Workers who are not acquainted spend some time in sizing each other up; as long as they do not come to an agreement, they do not carry off bread, or cart it off either. That is why the plant administration's directorate systematically arranged this sort of labor transfer.

It must be noted that even managers of bakeries, Communist Party members as a rule, took part in such "conspiracies" to plunder bread, and were transferred from one bakery to another no less frequently than were simple shop workers.

The manager of the Fourth Plant Administration, Mr. Shur, who became the permanent manager of the Fifth Bakery Plant when it was built, took a particularly active part in this struggle for the weight-percentage. Throughout a number of years Shur waged a desperate struggle with thieves, setting up unexpected accounting devices wherever possible, sending in "expeditions" of Komsomol "light cavalry," and so forth. And every "expedition" and every accounting device invariably resulted in turning over to the courts some persons responsible for the materials entrusted to them. However, the struggle produced no decisive results, and Mr. Shur, on the eve of the Second World War, had to acknowledge in his report to the director of the trust that all his activity in behalf of guarding "socialist" property could not prevent thefts either in the Fifth Bakery Plant or in the bakeries of the Fourth Plant Administration.

The bakery plants were better off in this regard, with more firmly established control, a greater number of workers in the dispatch office, and so forth. But even this setup did not save the bakery plants from pilferings—sometimes on a mass scale: whole truckloads of from two to two-and-a-half tons of bread.

Workers of the bread-baking industry received a beggarly wage. The average worker's salary on the eve of the Second World War was fixed by the control figures of the Five Year Plan at 205 rubles. A number of workers, however, earned considerably less than this: for example, office-cleaners earned 93 rubles a month, bread packers in the dispatch office 135 rubles, wrappers 160 rubles, the dispatch-office manager 200 rubles a month. A foreman-brigadier-specialist with many years' service earned from 400 to 500 rubles a month, depending on the level of production, percentage of spoilage, and a number of other productivity factors. In such a state of things theft of the finished product was inevitable; it was simply impossible to live on "bare" salary.

How did the laboring mass feel about all this? If the administration of the trust and its enterprises conducted a relentless struggle, the workers simply felt sorry for those of their comrades who were caught red-handed. The large criminal trials of workers accused of stealing bread attracted a large audience of sympathizers who were themselves far from innocent in this regard. In 1933, a worker of one of the bakeries of the Odessa trust's Fourth Plant Administration was adjudged guilty by the People's Court of stealing two loaves of bread (eight pounds) and sentenced to imprisonment for three years in general places of imprisonment.

Mass thefts in Soviet enterprises and the tolerant attitude of public workers to thieves of "socialist" property are also explained by the fact that not only the Soviet state, but the Soviet worker, strictly distinguishes between state and personal property. People of unimpeachable honesty, with whom one could trust any kind of "personal" property, busy themselves with the systematic theft of state goods—simply because a Soviet worker's pay is lower than the barest "living" minimum.

In Russia before the Revolution it was customary in the bread-baking industry that workers could eat all the bread they wanted in the shop and take bread home free to their families every Saturday after work. Soviet bread-baking abolished these "bourgeois" arrangements.

Throughout the years of NEP and approximately until the thirties bread was portioned out for shop workers, and each could eat his portion. Then even this privilege was revoked, and the workers had to bring bread from home, bread which cost a ruble fifty kopecks per kilogram, while they received a salary of from 93 to 275 rubles a month, with deductions for taxes. It is natural that the workers did not bring bread from home, but preferred, usually, to break off bits of hot baked bread and drop them in their pockets in order to eat them furtively with a sip of water.

As a result, from the middle thirties on, the technical spoilage of bread rose to an extraordinary extent, because the workers, having no legal opportunity to satisfy their hunger, ruined the freshly baked bread. This fell under the category of technical spoilage. The legal portion of bread that had been handed out up to the middle thirties had been called "eats" (*syed*); from that time on, there appeared "corrosions" (*razyed*), which were chastised in the criminal courts.

10. THE CASE OF THE STOLEN WIRE

The Odessa State Confectionery Plant of the People's Commissariat of Food Industries of the USSR lacked nails to fasten together the crates in which it shipped confectioneries to all parts of the USSR and abroad. As a result, the plant's warehouses were full of unpacked products and these very expensive and highly perishable goods had to be stored outside. The manager had no right to stop production, since that would have meant nonfulfillment of plan. Therefore, with the plant working twenty-four hours a day, in three shifts, the moment arrived when even tarpaulins were lacking with which to cover the goods lying under the open sky.

The confectionery plant manufactured it own nails from wire. Ordinarily it could obtain wire, however, only upon receipt of a permit (*nariad*) from the Chief of Administration for Bread, authorizing its procurement through the regular producing or trading channels. In the present case, either because no *nariad* was forthcoming or because even though one had been issued the supplier enterprises were unable to provide the goods, the manager resorted to a device common in Soviet business: he sent his procurement agent on a so-called "commandeering expedition" to find some enterprise with a surplus of the desired product and to purchase it "outside the plan."[1]

The procurement agent, in this instance, proposed that he be sent to Moscow to obtain the wire and that in the meantime a workshop be set up which could manufacture nails from the wire he would procure. This was done. Shortly thereafter the manager received a telegram from Moscow to the effect that the procurement agent could get the wire from the Academy of Sciences of the USSR for 800,000 rubles. The manager then took the precautionary measure of applying to the Ukrainian Branch of the State Bank for permission to transfer the necessary credit for this purpose from the confectionery plant's balance in the Odessa Regional Branch of the State Bank.[2] This permission was given; the wire was bought and shipped to Odessa, nails were made from it, the crates were fastened, and the perishable goods were saved from spoilage and delivered to the customers of the confectionery plant under its various contracts.

Three months later it was learned that the wire had previously been stolen from the Moscow Subway, then under construction, and that the Academy of Sciences had thus sold the confectionery plant stolen goods. As a result of this discovery the whole "deal" was brought to light, and the plant manager and the procurement agent were indicted under Articles 97 and 99 of the Ukrainian Criminal Code for abuse of authority and neglect of official duties, and the plant's treasurer was indicted under Article 99 for neglect of official duties.[3]

At the trial the defense was based on the following considerations: the complete absence of any mercenary aims in the actions of the accused, who had been guided only by their desire to fulfill the plan and to ship their merchandise to its destination according to the provisions of their contracts; the sanctioning of the operation by the Ukrainian Branch of the State Bank as well as by the Odessa Regional Branch which had accepted the order of the State Confectionery Plant to pay for the wire; and the ignorance of the procurement agent of the fact that the wire had been stolen.

The court nevertheless considered the accusation proved, since the charge was that the wire had been purchased without an administrative authorization, in violation of the system of planned distribution and in "neglect of official

duties." It held this to be "abuse of authority," regardless of whether or not the wire was stolen and regardless of the accused's knowledge or ignorance of the fact that it was stolen. It therefore sentenced the manager to three years' deprivation of freedom in general places of imprisonment; the procurement agent to ten years' deprivation of freedom in corrective labor camps of the NVKD; and the treasurer to one year's compulsory labor tasks at his place of work, with deduction of 25 per cent of his pay.[4] The convicted men appealed—but without success.[5]

11. A CASE OF BAD BOOKKEEPING

In the summer of 1940, Mr. Stoianov, the manager of the sales office of the Odessa Bread Trust's rolls (*bublichki*) department, was transferred to other work. In turning over the files, he asked the office's bookkeeper to settle all monetary accounts with him, since he, Stoianov, had been personally responsible for the sales of rolls by street vendors, and as much as 800,000 rubles had passed through his hands from these sales.

The office's chief bookkeeper, Mr. Prokhnich, checked all the accounts and declared that Stoianov not only did not owe the office anything, but on the contrary, the office owed Stoianov some 3000 rubles. Stoianov, apparently surprised by such a turn of affairs, asked the chief bookkeeper to check his accounts once again and refused to take the money that seemed to be due him. The bookkeeping section of the office once again undertook a detailed check of the mutual accounts, as a result of which they again declared that the office owed Stoianov 3000 rubles. There was nothing left for Stoianov to do but accept the sum indicated; but he agreed to accept only after the completion of the quarterly accounting of the sales office.

Several months passed. The chief bookkeeper of the office was transferred to a bakery by the directorate of the trust, and another bookkeeper was assigned to the sales office. Shortly thereafter, the new manager of the sales office invited the chief legal adviser of the trust to his office for a secret conference and told him an extraordinary story. It seemed (according to the manager) that the office had not owed Stoianov 3000 rubles at all; on the contrary, Stoianov had been in debt to the office to the sum of 5000 rubles, a fact that had been established by the new bookkeeper. Since all the circumstances of the case seemed so very wobbly, since Stoianov had not wanted to take the money without a detailed accounting check, and since chaos apparently reigned over the affairs of the bookkeeping department, the directorate of the trust, on the advice of the chief legal adviser, ordered a special examination—for which purpose the treasurer of the trust delegated the two chief bookkeepers of the Odessa Bakeries.

As a result of the examination, it was established that Stoianov owed the office 5000 rubles. Stoianov did not agree with this, claiming that he could not acknowledge a whole series of invoices presented to him, for which he said he had received no rolls from the bakery. These dispatch invoices had been kept in the bookkeeping section of the sales office, however.

Considering the confused state of the accounts, the chief legal adviser of the trust brought suit against Stoianov but did not demand a criminal prosecution. The People's Court, on the basis of the findings of a special court investigating committee, ordered Stoianov to pay the sales office the above named sum of 5000 rubles, plus the 3000 rubles the office had paid him by mistake.

Unfortunately for Stoainov, the Procuracy of the USSR had issued an order to check all civil cases in the people's courts dealing with deficiencies of goods or money, with instructions to bring those persons to trial who had been held liable in civil suits for large accounting deficiencies. Stoianov was brought to trial under Article 97 of the Ukrainian Criminal Code for abuse of authority. The chief bookkeeper of the office, Prokhnich, was indicted under Article 99 for negligence in his official duties.

Stoianov was sentenced to five years of forced labor in corrective labor camps in remote regions of Siberia, and Prokhnich to one year of compulsory labor tasks at his place of work, with 25 per cent of his monthly wage withheld.[6]

12. THE CASE OF THE ABSENT FOREMAN

The edict of June 26, 1940, imposed criminal liability on workers and employees late for work or absent without adequate reason.[7] At the same time, the Procuracy of the USSR ordered plant and factory managers and heads of Soviet institutions in general promptly to transfer to the courts all cases of violation of this edict.

The manager of one of the Odessa Bakeries received word from the plant office that an old foreman, with many years' standing and well known as a conscientious worker, had not shown up for work. Instead of informing the district procuracy at once, the plant manager decided to wait twenty-four hours; he then sent a member of the factory committee to the foreman's home to find out the reason for his absence.

It turned out, unfortunately, that he had gotten drunk; therefore, the manager, after an "Investigation," informed the procuracy of the affair and requested that the worker be called to task for arbitrary absence from work.

The procuracy looked at the case differently, however. Considering that the plant manager had not reported the case "promptly," but only after five days, the procuracy indicted him under Article 99 of the Ukrainian Criminal Code for neglect of his official duties. The People's Court pronounced the manager guilty and sentenced him to one year of compulsory labor tasks at his place of work, withholding 25 per cent of his salary.

13. THE CASE OF THE BAKERY GANG

In 1934 the management of the Odessa Bread Trust became concerned, when one of its bakeries began to show a drop in productivity that could not in any way be justified. The investigating organs, informed of the situation, discovered that a number of workers employed in the bakery and in the Odessa Food Supply Organization had organized a "gang" that systematically took bread out of the bakery, loaded it on trucks, and sold this bread to the population through the sales network of the Food Supply Organization. They shared the proceeds from this sale among themselves. Even employees in positions of responsibility belonged to this "gang," such as the secretary of the party organization of the office for bread of the Food Supply Organization. Total membership was about twenty men.

These persons were indicted under the law of August 7, 1932, on theft of state property.[8] The Odessa Bread Trust also brought a civil suit for the sum of

80,000 rubles. The procuracy of the GPU supported the accusation.[9] The case was heard as a demonstration trial;[10] it attracted a large audience, and many curious circumstances were revealed at the session.

All the accused were members of the All-Russian Communist Party or of the Komsomol.[11] One of them, the dispatch officer of the office for bread of the Food Supply Organization, had even been a participant in the seizure of the Winter Palace in Petrograd on October 25, 1917, and in the arrest of the Provisional Government. The members of the Komsomol, working as clerks in the bakery shops of the Food Supply Organization, not only participated in the sale of bread stolen from the bakery, but were also systematically engaged in weighing short their customers. (For this purpose, they had set up a special gadget on their scales that made the scales weigh about 100 grams short for each 500 grams.) The secretary of the party organization of the office for bread, knowing of these activities, accepted bribes from the Komsomols involved; these bribes were in the form of "presents" (butter, wine, fowl, and so forth), which were put in a basket and delivered by the secretary's dog who was trained to carry the basket to his master.

The court sentenced all the accused to ten years' imprisonment in corrective labor camps in remote regions of Siberia.

14. THE CASE OF A LAWYER WITH TOO MANY JOBS

On the eve of the outbreak of war between the Soviet Union and Germany, charges were preferred against an Odessa lawyer named Landshtrass on the ground that he was legal consultant to twelve different institutions and enterprises at the same time, in violation of a 1933 decree restricting a lawyer to no more than two such posts. Though such an accumulation of jobs was rather exceptional, nevertheless—as was well known to court and procuracy alike —almost every legal consultant held more than the two jobs which he was permitted to have according to the law. The reason for that was the shortage of qualified legal consultants which had been especially acute in the USSR since 1933.

Therefore, the institution of criminal proceedings against Landshtrass came as a shock to all legal consultants of the city, the more so since he was generally recognized as one of the most experienced and competent and well-educated jurists in one of the foremost cultural centers of the Soviet Union.

The prosecution charged that Landshtrass was employed as legal consultant by ten producers' coöperatives, being paid 150 to 200 rubles per month by each of them, in addition to being a staff member on the payroll of the Producers Association to which these coöperatives belonged, which paid him 350 rubles per month in addition; and that he also served one other economic organization.

Landshtrass pleaded not guilty. In his defense he argued that he was working essentially for only two economic organizations, since his work for the ten coöperatives comprising the Producers Association must be regarded as one job.[12]

The director of the association and the managers of the component coöperatives testified as witnesses that Landshtrass' work was of invaluable significance to the association, that he was essentially a member of the staff of the association only and not of the coöperatives, and that he received pay from the latter solely as a matter of convenient accounting. Nevertheless, the court found him guilty of abuse of authority under Article 97 of the Ukrainian Criminal Code and sen-

tenced him to deprivation of freedom for five years, to be served in remote corrective labor camps. As soon as the sentence was handed down, he was arrested in the court room and taken to prison.

Whether this sentence was carried out is not known, because within a week or two war broke out with Germany, and the defeats of the Red Army compelled the government to evacuate Odessa in October of the same year. All court records in Odessa were destroyed before evacuation.

Notes

10. THE STOLEN WIRE

1. The practice of purchasing "superfluous" supplies in this manner was somewhat curbed by laws of 1941 which are discussed below, p. 33, and in Berman, *Justice in Russia*, pp. 69–70.

2. All payments by state business enterprises are made through the State Bank, which debits and credits the accounts of the parties. In so doing it exercises a general supervision over financial transactions and is supposed to catch violations of the law. However, its authorization of a transaction does not necessarily make it legal—as the present case holds.

3. Articles 97 and 99 are translated above, in notes 1 and 17 to Chapter I.

4. Deprivation of freedom up to three years is served in "general places of imprisonment," which include local prisons and agricultural colonies. In this case Mr. Konstantinovsky states that the director was sent to an agricultural colony in the city of Kherson where he worked at the head of the procurement division of that colony.

Deprivation of freedom for more than three years is served generally in corrective labor camps. These are often situated in remote places such as Siberia, Central Asia, the Far East, and in places where new construction is being undertaken (such as canals, railroads, and the like). The corrective labor camps are under the administration of the Ministry of Internal Affairs (MVD, formerly People's Commissariat of Internal Affairs, abbreviated NKVD). Mr. Konstantinovsky states that in this case the procurement agent was sent to Eastern Siberia to the gold mines, which was "substantially a prolonged death sentence." He explains the discrepancy between the heavy sentence of the procurement agent and the light sentence of the director by the fact that the director "was a responsible official, a member of the Party, who possessed many friends and acquaintances in leading Party organizations." However, he adds, the director would normally be expelled from the Party after such a conviction.

On compulsory labor tasks, see Chapter I, note 15.

"The lightness of the treasurer's sentence," writes Mr. Konstantinovsky in commenting on this case, "is probably to be explained by the fact that the court knew that he had given his consent to this financial operation only after the Plant had received a letter signed by the chief of the Ukrainian Branch of the State Bank authorizing it." As to why this person was not also indicted, Mr. Konstantinovsky writes: "The court apparently did not want to drag in the very ticklish question of the responsibility of an eminent Party member."

5. "The operation for which these men were condemned," writes Mr. Konstantinovsky, "is a common occurrence in the life of a Soviet state business enterprise. Quite frequently an enterprise has a *nariad* in its hands but is unable to realize it because of the shortage of goods in the hands of the supplier. The administration of the enterprise is then forced to 'stock up' by the method described here, and to risk being brought to trial.

"The conditions under which Soviet managers work and the necessity for them to cut their way, as it were, through bureaucratic red tape in order to fulfill and over-fulfill planned tasks have resulted in the creation of the position of the 'pusher' (*tolkach*)—a position not provided for in any official table of organization, but without which not a single economic organ could get along. The fact is that the existence of a *nariad* alone, or even the payment to the account of the seller in the State Bank, for, say, an automobile to be delivered to a particular railroad station—still does not give the buyer any guarantee that he will actually receive the goods. In order to *get* the automobile or other machine or equipment, the plant manager is compelled to commandeer the procurement agent with the special assignment of 'pushing the goods through' (*protolknut'*). The 'pusher' goes out on a 'commandeering

expedition' to 'organize' the railroad car or cars, to get the goods loaded, get the cars attached to the next through-train, and so forth. This is all outside the contract, which generally provides that it is the seller's obligation to secure transportation and make delivery."

Such "commandeering" and "pushing" may be perfectly legal. Indeed, regular rates are established by law for "commandeering" expenses—travel expenses, hotel accommodations, and the like. But a good deal of the activity of "pushers"—many of whom are permanently established in production centers to represent their enterprises—is directed toward evading the restrictions imposed by the very system of planned distribution. As long as the plan is "fulfilled and over-fulfilled" these evasions generally go unnoticed—unless they are brought to light by some unusual circumstances such as the discovery, as in the present case, that the 800,000 rubles' worth of wire had been stolen from the Moscow Subway.

11. BAD BOOKKEEPING

6. See above, note 15 to Chapter I.

12. THE ABSENT FOREMAN

7. The law of June 26, 1940, provides in Article 5 and 6:

"Article 5. A workman or clerk who voluntarily leaves a state, coöperative or public enterprise or office, shall be tried by a court, and in accordance with the sentence of the People's Court shall be imprisoned for terms from two to four months.

"For absenteeism without satisfactory reason, workers and clerks of state, coöperative and public enterprises and offices shall be tried by a court, and in accordance with the sentence of the People's Court shall be penalized by correctional labor at their place of work for terms up to six months with withholding of their wages in amounts up to 25 per cent.

"In view of the above, compulsory dismissal for absenteeism without satisfactory reasons shall be abolished.

"People's Courts shall be ordered to review all cases referred to in the present Article in not less than five days and shall put the sentence into effect immediately.

"Article 6. A director of an enterprise or chief of an office who does not prosecute persons guilty of voluntary departure from an enterprise or office or guilty of absenteeism without satisfactory reasons shall be held responsible before a court."

13. THE BAKERY GANG

8. The law of August 7, 1932, made theft of socialist property punishable by deprivation of freedom for not less than ten years, with confiscation of property, and, under certain aggravating circumstances, when done repeatedly by organized gangs, by death by shooting.

9. The GPU was a predecessor of the Ministry of the Interior. Like the Ministry of the Interior it had its own procuracy, which represented it in criminal cases involving political matters.

10. On demonstration trials, see Chapter I, note 2.

11. On the Komsomol (Young Communist League), see above, note 13 to Chapter I.

14. THE LAWYER WITH TOO MANY JOBS

12. Producers' cöoperatives differ from state business enterprises in that they are subordinate to different administrative organs and in addition the workers in a coöperative are remunerated on the basis of shares in the profits. The coöperatives (*artels*) are generally organized into associations (unions) of coöperatives. However, both the individual coöperative artel and the association (union) of coöperatives are legal persons, participating independently in trade, with individual accounts in the state bank and independent balance sheets. The association is not liable as such for the debts of the member coöperative artels.

III

LAW AND PLAN

INTRODUCTION

It is possible to imagine a completely centralized system of production and distribution in which all the important economic decisions are made by a single body of people. Such a body would decide what should be produced, in what quantities, by what units, to what units it should be delivered, at what times; it would decide how many persons should engage in the production and distribution of each product, in what places they should work, how the labor should be divided; it would decide what compensation the various workers or kinds of workers should receive, whether in kind or in ration cards, and also how the various products should be accounted for in the books of the producing and consuming units.

It is possible to imagine that in such a system each person engaged in economic activity would be guided by the regulations issued by the central body, with some detailization by subordinate units below, subject to confirmation from above; and that any disputes over the interpretation of any regulations would be decided by the administrators of the particular regulations on the spot, subject to review by the central body.

The system might function like a military system, with strict discipline, each person acting under orders from above; or it might function in a voluntary way, each person coöperating of his own free will; or it might combine elements of both military discipline and voluntary coöperation. It would not require the use of money except perhaps as a unit of account; contracts of purchase and sale would be replaced by allocation orders; labor contracts would be replaced by labor mobilization orders; the judiciary would be replaced by the administrative hierarchy, with provision perhaps for conciliation boards for certain types of disputes.

It was some such system of economic administration that many prominent Soviet leaders once visualized as desirable and necessary for the functioning of a socialist planned economy. It was in the name of some such system that leading Soviet economists and jurists prior to 1936 anticipated the "withering away" of money, of contracts, and of law altogether, once "socialism" was achieved. This is not the place to discuss the reasons for the abandonment of the earlier Soviet vision; however, if the cases presented in this chapter are to be understood, it is necessary to consider the dualism of the Soviet economic system as it has functioned since the mid-1930's—that is, the attempted reconciliation of economic planning on the one hand with a money economy, the profit motive, contractual responsibility, the legal autonomy of the individual state business enterprise, on the other. This dualism, which the Soviets call "democratic centralism" (centralization of planning, decentralization of operations), is appropriately reflected in the structure and functioning of the bread industry, and particularly in the internal and external relations of the Odessa Bread

Trust, with whose economic problems most of the following cases are concerned.

Soviet economic administration is in the hands not of the State Planning Committee (*Gosplan*), but rather of the various economic ministries—the ministry of ferrous metallurgy, the ministry of aircraft, the ministry of light industry, the ministry of rail transportation, the ministry of finance, the ministry of foreign trade, and some thirty others. Together with some ten noneconomic ministries (internal affairs, state security, war, foreign affairs, public health, justice, and others), these ministries are represented in the Council of Ministers, the highest executive-administrative organ of Soviet government, to which Gosplan is a subordinate administrative body. Stalin is chairman of the Council of Ministers; Molotov was, before the war.

An economic ministry is divided into chief administrations (*glavki*) for subindustries or for areas or for both, and in certain industries (especially those producing for mass consumption, such as the bread industry) the glavki are further subdivided into trusts. Plans drawn up by Gosplan are submitted for approval and confirmation to the Council of Ministers and the individual ministries; the plans finally adopted are transmitted in the form of "planned tasks" down through the glavki and trusts to the operative factories, plants, and other business units.

However, plans are necessarily based upon data furnished from below. Since the abandonment in 1936 of the general policy of subsidies, it has been emphasized that the plans must take into account the integrity and responsibility of the individual links in the economy, that they must be based in part upon the balance sheets of the individual economic units. This is a recognition of the principle of "business accountability" (*khozraschet*), which means that each glavk, trust, or enterprise is supposed to answer for its liabilities with its assets, and that each industry is supposed to pay its own way. "Logically," wrote a leading Soviet financial expert in 1945, "[capital accumulation] could be entirely contributed by the Exchequer, for the State is the owner of industry. In actual fact, however, the process is much more complicated. This is necessitated by the following considerations: the State seeks to create among the managers and workers of its establishments a direct interest in the results of their efforts. State-owned establishments are run as juridically independent economic units. Each establishment, having received from the State for its exclusive use both equipment and capital, proceeds to operate on its own, with its own financial accounting, bank account, credit facilities, and, finally, with the right to make a profit. In the distribution of this profit the establishment considers its own requirements, contributes a definite sum to the workers' welfare, and provides bonuses for good workers."*

Professor Konstantinovsky gives a similarly paradoxical description of Soviet planning. "By business accountability," he states, "is meant that system of Soviet economic administration in which, on the one hand, the economic initiative of each individual enterprise and its vested interest in the execution of the planned tasks of the State are preserved, and on the other, through the system of economic contracts concluded on the basis of plan, mutual supervision over the individual enterprises in the fulfillment of their planned tasks is established. Consequently, the business accountability of the individual enterprises requires a definite system of planned mutual relations between them."

* M. I. Bogolepov, *Soviet Financial System* (1945), pp. 8–9.

Such general descriptions leave us with unresolved contradictions. More detailed analysis of concrete economic operations simplifies the picture somewhat, but by no means clarifies it altogether. Professor Konstantinovsky writes:

"The plan is given material expression in the funds which the government distributes annually among the individual branches of the economy (ministries), which in turn redistribute their allotted shares to the glavki. The glavki 'break down' the funds in the form of permits (*nariady*) issued to their trusts, which transmit them to their enterprises to be realized.* One must bear in mind that the seller of finished goods is at the same time a buyer of raw materials, fuel, and other materials needed for production. Therefore, the glavki, in giving their subordinate trusts or enterprises planned tasks of production, at the same time send out permits (*nariady*) giving the right to acquire necessary raw materials, fuel, and so forth. In the same way, trading enterprises also receive from their superior organizations plans and *nariady*—that is, the right to purchase finished products from the producing enterprises. A *nariad* in the hands of a trading organization is an order to a producing enterprise for the delivery of finished products to the holder of the *nariad*. A *nariad* is a nominal document and cannot be transferred to any other organization.

"Nevertheless, the *nariad* alone is not sufficient for procuring the desired product. It is necessary for the holder of the *nariad* to conclude a contract of purchase and sale with the supplier. . . The role of the contract, which gives concreteness to the *planned* mutual relations among individual economic organs, is immense. The formulation of planned relations by contract is not their simple duplication but rather the establishment of the concrete responsibility of the individual participants in economic exchange for their fulfillment.

"Thus a planned task which has not been formulated by an economic contract is not yet plan . . . [just as] the economic contract is invalid if it is not connected with a planned task . . . [likewise], neither a *nariad* without a contract nor a contract without a *nariad* creates a normal movement of the basic currents of material values. Without the existence of contractual relationships, the parties are not secure with regard to the quality, quantity, assortment, packaging, and marking of the goods, the time of delivery, the price and the accuracy of accounts. Without funds and *nariady,* the economic contract creates no rights or duties whatever."

To these statements certain qualifications must be added. Not all products are distributed by means of funds; some are allotted without *nariady* through quotas assigned to geographical areas rather than to particular economic organizations, and some may be purchased entirely freely. Further, there are varying degrees of restriction upon the terms of the contracts, and consequently varying limitations upon freedom to bargain; some contracts are strictly planned, in that their most important terms, including the parties to the transaction and the quantity and quality of the goods to be transferred, are expressly dictated in the planned tasks issued by the ministries of glavki, while other contracts are planned only in general terms, leaving it to the decision of the parties whether or not to conclude the contract at all and (within the general limits of law) on what terms.

Bread is a funded product. On the whole, the contracts entered into by the

* "Funds" are rights to quantities of specific products; *nariady* are permits issued by the fund-holder authorizing the permittee to procure specified quantities of the funded product.—H.J.B.

Odessa Bread Trust were more strictly, rather than less strictly, planned. However, the cases presented in this chapter reveal the variety and complexity of the economic and commercial relations with which its chief legal adviser was concerned. They show some of the Soviet "bottlenecks of business," and some of the devices available to ingenious Soviet managers (and their lawyers) to carry on successfully in spite of the bottlenecks. They illustrate the dilemma of what the Soviets themselves call "excessive regimentation," which freezes the flow of commodities, and contractual freedom, which defeats the plans of distribution.

The cases included in this chapter may be better understood after reading the following description of the structure and functioning of the Soviet bread industry and of the Odessa Bread Trust, written by Professor Konstantinovsky.

I

Toward the end of the New Economic Policy (1928), the bread-baking industry of the USSR was in the hands of consumers' industrial coöperatives. In Odessa, for example, the Odessa Central Workers' Coöperative baked bread in the First and Third Bakery Plants, large mechanized bakeries, one of which before the Revolution had belonged to the city and the other to the "Diligence" (*Trudoliubye*) Corporation. In addition, a whole series of small home-industry bake shops, which in pre-revolutionary times belonged to private persons and corporations, formed the Fourth Plant Administration.

At the very end of the NEP, the Odessa Central Workers' Coöperative, with the assistance of the Central Union of Coöperatives of the USSR (*Tsentrosoiuz*), purchased mechanized equipment in England and built Automatic Plant Number Two, with a productive capacity of from 85 to 90 tons of bread every twenty-four hours.

With the First Five-Year Plan (1928–1932), the industrialization of the national economy of the USSR, and the increased role of the state in the economic life of the country, the bread division of the Central Workers' Coöperative was separated from the coöperative and reconstituted in 1931 into the Odessa Bakery Trust. Bakeries directly subordinate to the All-Ukraine Branch Union of the bread-baking industry for their part entered the All-Ukraine Union of Consumers' Coöperatives.

The newly organized Bakery Trust was a coöperative on the municipal level, not connected with local consumers' coöperatives, but directly subordinate to the higher Coöperative Centers in Kharkov, which was at that time the capital of the Ukrainian Soviet Socialist Republic. This coöperative producers' trust was organized on the principles of one-man management rather than collegiate administration such as usually prevails in coöperative institutions. At its head was a director, a member of the Communist Party of the Ukraine, appointed officially by the coöperative's administration, but actually by the municipal committee of the Party. The assistant director, also a Party member, was appointed in the same way. Although the assistant director was supposed to be the director's closest subordinate according to the table of organization, actually the position was insignificant, more of a sinecure, its real purpose being to strengthen the party organization within the trust, since the number of party members was at that time very small—three or four members in all. The trust's administrative

employees—about fifty men—were distributed among the following sections: (1) management, (2) production (headed by the Chief Engineer, who was the real assistant director), (3) planning (the trust's central nerve), (4) bookkeeping, (5) the laboratory, (6) sales,* (7) the legal section (consisting at that time of one legal consultant), (8) the special section—that is to say, the section of the NKVD in the trust.

In 1933 coöperative bread baking was liquidated and the industry was transferred to the Chief Administration for Bread of the Council of People's Commissars of the USSR, the Chief Administration for Bread of the RSFSR, the Chief Administration for Bread of the Ukrainian SSR, and the regional trusts subordinate to these chief administrations (*glavki*). The structure and organization of these trusts remained the same as it had been in the coöperative branches under Tsentrosoiuz of the USSR, but the amount of work done by each increased many times. In the first place, the trusts of city enterprises were turned into trusts on a regional scale. In the second place, their productive activity came to include not only baking bread but also the production of confectionery goods. The number of productive enterprises increased every year, and by January 1, 1941, the organizational structure of the Odessa Trust included six regular bakeries besides a rolls bakery and a confectionery plant. In addition there were added numerous subsidiary enterprises: offices of procurement, sale, and transport; a sawmill; a bag plant; a tailoring workshop where special clothes for bakery workers were manufactured; three company stores; an educational combine which included a bread-baking school for training specialists of middle qualifications (such as laboratory assistants) and a training school for apprentices on an elementary level. On the border of the Odessa region and the Autonomous Moldavian Soviet Republic, bakeries in the cities of Nikolaev, Kherson, Ochakov, Kirovograd, Tiraspol, Birzul, and Pervomaisk were subordinate to the Odessa Trust.

Rapid expansion brought with it serious difficulties. In 1935 the Fifth Bakery was built in Odessa, with a productive capacity of from forty-five to fifty tons of bread a day. A Jewish synagogue was converted to this purpose. The plant was built in a hurry, taking three months in all, and at once a number of defects in the equipment became apparent. Due to the insufficient facilities of the plant's dispatch office, and to confusion during the hours when the bread was collected by trading organizations, transport stoppages occurred constantly. As a result the trust had endless quarrels with the trading organizations and there were a great number of arbitration cases, with investigating committees and so forth. In addition to this, it seemed that the plant was clearly unsatisfactory from a sanitary point of view. It was especially plagued by wood and grain insects, which the workers called "the Circassians." This plant was therefore ordered by the trust to clean out its storerooms, and especially its flour bin, with chemical disinfectant within three days. When the gassed storerooms were opened there lay on the floor of the flour bin, before the startled gaze of the trust's director, an incredible heap of "Circassians."

In connection with the expansion of bread production in the thirties the

* This section was organized in the fall of 1932; before that time the assistant director managed all commercial operations, but his work was so unsatisfactory that the municipal committee of the Party, after constant complaints by the director, removed him at last as being "incapable." Commercial operations were then transferred to the newly created sales section, headed by a non-party specialist who put the work on a proper footing.

Fourth Plant Administration, which united several small home bakeries, was divided into the Fourth and the Sixth. The Sixth Plant Administration specialized in baking small piece goods, Vienna loaves, and similar kinds of rolls. The baking of these products was separated at the end of the thirties into a special rolls administration. At about this time four small bakeries specializing in baking confectionery goods were separated from the Sixth Plant Administration, and formed an independent confectionery plant, directly subordinate to the trust.

Of the many enterprises belonging to the trust, the Kherson, Tiraspol, and Birzul Bakeries were new plants built by the trust.

II

The manager of each bakery plant or other subordinate enterprise of the trust is appointed formally by the District Executive Committee (the highest executive-administrative authority of the District) on the recommendation of the director of the trust; but actually he is selected by the municipal committee of the Communist Party.

The plant manager is responsible to the trust and the District Executive Committee; he is also responsible to the party organization that assigned him to his job. In the history of the Odessa Trust there have only been a few plant managers who really managed. Among such administrators were the Manager of the Second Odessa Bakery, Engineer Pankov, and the Manager of the Fourth Plant Administration, Mr. Shur, who had formerly been a rank-and-file worker, a man of great administrative abilities.* Usually the plant manager represents the party line in the enterprise, the party's "eye" on production. The actual leader is usually the assistant manager, a chief engineer—quite frequently a non-Party specialist. Although by law the manager runs the enterprise on the principles of one-man management, actually the "triangle"—the plant manager, the secretary of the Party organization and the representative of the local trade union (the factory committee)—plays a large part in the life of every Soviet citizen.

The bakeries worked twenty-four hours straight, 365 days a year. The workers and employees were therefore divided into three shifts. The length of a working day (up to the Second World War) was seven hours, and there were twenty-two and a half working days in a month.†

At the head of each shift was a foreman-brigadier (who, in the large plants, was usually a Party member). Under him were the foreman, the dough kneaders, the bakers, and the apprentices. The foreman-brigadier, as leader of the shift, was responsible for its work to the directorate of the trust.

The dispatch office and the subsidiary workshops, such as the mechanical workshop, the laboratory, the hop-growing workshop that grew fermenting agents to substitute for yeast at the Second Bakery, the sawmill at the First Bakery, and the workers' and employees' dining room ("the nutrition workshop"), all entered into the structure of the plant's administration.

III

Special Sections of the NKVD (now MVD) in the enterprises, as in the trust, were an integral part of the trust and plant apparatus; nevertheless, they rep-

* Engineer Pankov was one of the defendants convicted in the Case of the Stolen Wire, Case 10, above p. 20.

† In 1940 a six-day work week and an eight-hour work day were introduced in the Soviet Union generally, with Sunday as a common day of rest.

resented a special autonomous rule. The Special Section was separated from the premises of the rest of the administrative apparatus by a special door lined with a special soundproof material and reinforced with lead, equipped in the manner of bank-vaults, in order to isolate it. It was categorically prohibited for any employee to enter the Special Sections' offices, except the trust's director or the plant manager, who had entry only by special permission of the head of the Special Section. Communication with the outside world was carried on through a peephole in the door. All this created a unique place for the Special Section in a Soviet enterprise.

All correspondence in the name of the Special Section was delivered by a special courier of the NKVD to the director of the trust (or the plant manager) personally, under the impress of five wax seals which the manager had no right to open and was inviolably bound to deliver *personally* to the chief of the Special Section.

What sort of functions did the Special Section have? No one, with the exception of specially entrusted individuals, knows exactly. Judging by the fact that the manager of the trust's Special Section collected their military cards from the administrative employees of the trust and the workers and employees of the plants, and exercised supervision at the same time over the fulfillment of military obligations and assignments among the armed forces, it is possible to conclude that the Special Sections kept special account of military obligations. But this certainly is not the fundamental role of the NKVD in a Soviet enterprise. One must suppose that supervision of the work and of the personal behavior both at work and outside the trust or plant of each and every worker and employee, regardless of his party position, entered into the round of the Special Section's duties. In any case, in one respect the chief of the Special Section has more authority than the director himself, for in the matter of delivering its correspondence the director plays the role of a simple courier. To say simply that a worker of the Special Section is a member of the Communist Party is misleading. This section is one of the most authoritative parts of the trust's party organization and those of the enterprises subordinate to the Trust.

IV

The trust, according to the law of 1927, is a juridical person, an independent participant in economic exchange, with its own means of exchange, with a payments-account in Gosbank, and with an independent annual balance of its activity, which is submitted annually by the Trust to the Chief Administration for Bread of the USSR. The productive enterprises of the trust—bakeries and plant administrations, and subsidiary enterprises such as offices of supply, sales, and transport—were completely subordinate to the trust and did not possess the rights of a juridical person. This circumstance had great significance for third persons, since the trust, as a juridical person, answered for the debts of its enterprises. Consequently, creditors of a particular enterprise of the trust could if necessary reach the assets of the trust. This is the essential difference between the business accountability of the trust and the business accountability of its subordinate bakeries, plant administrations, and other enterprises.

An enterprise of the trust can conclude agreements in its own name only for the procurement of materials necessary for that particular enterprise, and only with the approval of the trust's director and the chief legal adviser. Otherwise it is the trust that enters into contracts of purchase and sale, not the subordinate enterprises. These supply manufactured products to trading organiza-

tions only according to the administrative orders of the trust, and such administrative orders are commands, requiring fulfillment by the subordinate enterprise without reservation. Claims by buyers arising from a bakery's delay in delivering bread, shortages, poor quality, violation of the proper assortments, and so forth, are brought directly to the trust, which handles all the claims cases going to court or to Gosarbitrazh.* Likewise, the trust, upon receiving permits (*nariady*) for flour, fat, sugar, salt, and similar ingredients through the Chief Administration for Bread of the USSR, issues to its own enterprises subpermits (*raznariady*) for direct procurement of the allotted materials from suppliers' depots (flour mills, bases, railroad stations, piers). The trust's enterprises handle the accounts for these materials with the supplier directly, just as they handle the accounts with buyers for goods produced by the bakeries.

15. A NOTE ON RED TAPE

On February 25, 1941, the Council of People's Commissars of the USSR issued a decree forbidding all enterprises of the socialized sector to release to one another raw material, fuel, and the like. In cases of extreme necessity, the director of an enterprise was obliged to telegraph a request to the Council of People's Commissars of the USSR in order to receive permission.

Soviet state business enterprises obtain raw materials, fuel, and the like, in accordance with permits (*nariady*) received from their chief administrations (*glavki*). Without such a permit these enterprises could not "commodify" (*otovarit'*), as Soviet managers say, the needed products. With such an authorization in hand, the agent of the enterprise orders the goods from trading office of the supplier enterprise and settles accounts through the State Bank.

Quite frequently an enterprise with such a permit for delivery in hand, realizing that before it receives shipment in accordance with the authorization it may run short of some small quantity of raw materials, turns to another enterprise with a request to help out by lending the needed amount for a day or so, usually a small amount—one hundred kilograms of sugar, for example, or two bags of flour, fifty kilograms of nails, and so forth. After receiving the authorized goods the enterprise returns the loan.

The 1941 decree of the Council of People's Commissars of the USSR forbade this practice, requiring enterprises or trusts to apply for permission from the Council in each separate case. As a result, in April 1941, the Odessa Bread Trust was forced to apply for the Council's permission to transfer two bags of flour (160 kilograms) from one bakery to another. In reply, the Chairman of the Council sent a telegram to the legal adviser of the Trust: "Transfer permitted. Signed, Molotov."

This law literally bound all managers hand and foot, but the government, by a decree of March 25, 1941, once again confirmed it.[1]

16. ODESSA BREAD TRUST *v.* DIVISION OF COMMUNAL ECONOMY[2]

Under a contract of April 1932, the Division of Communal Economy in Odessa leased to the Odessa Bread Trust sixteen bakeries which were to be used for the baking of rolls.

* Gosarbitrazh is a special system of tribunals for adjudication of disputes between state business enterprises.

After six months the People's Commissariat of the Food Industry of the USSR modified the output quota of these products, which compelled the Odessa Bread Trust to discontinue production in some of the rented bakeries.

The Odessa Bread Trust then turned to the Communal Division with the request to dissolve prematurely that part of the contract pertaining to the leasing of those bakeries which could not be used. The Communal Division did not accede to this proposal and requested payment of the rent according to the contract as a whole, whereupon the trust brought suit in the People's Court.

The People's Court held that "a reduction of the output quota of bread and rolls cannot be recognized as a ground for nonfulfillment of the contract, because the tenant himself should have foreseen and anticipated his operations." The claim of the Odessa Bread Trust was therefore rejected on the ground that Article 171 of the Civil Code, which states the circumstances under which a lease may be rescinded, did not apply to the present situation.[3]

On appeal by the Odessa Trust, the Odessa Regional Court handed down the following decision: It is apparent from the evidence offered by the plaintiff that the impossibility of fulfilling the contract was caused by the reduction of output of bread and rolls by the People's Commissariat for Food, and not by the plaintiff. To compel the continuance of the contract of lease under these circumstances would contradict the basic purpose of the contract, one of whose clauses stipulates that the leased property "is to be used exclusively for purposes of the bakeries"; it would, in addition, run counter to Article 1 of the Civil Code which protects civil rights only insofar as they are used in conformity with their socio-economic purpose.[4]

Therefore the Regional Court set aside the decision of the People's Court and remanded the case to the People's Court for retrial.

17. A CASE OF "COMMANDEERING"

The Odessa Bread Trust had to buy twenty carloads of lumber in connection with building a special workshop to prepare biscuits for the needs of the military. According to the order received by the Chief Administration of Bread, this lumber was to be shipped by the agricultural division of the NKVD in Moscow, which engaged in commercial operations involving the sale of lumber provided by the Chief Administration of Corrective Labor Camps (*Glavgulag*) of the NKVD.[5]

When the manager of the Procurement Office of the Odessa Trust arrived in Moscow for this purpose, the NKVD informed him that the whole operation of shipping the lumber would cost the Trust 15,000 rubles. As a result of negotiations, this sum was reduced to 5000 rubles and the lumber was dispatched.

The 5000 rubles that had been paid to the NKVD for "services rendered" were entered in the trust's books as expenses in sending a delegation to Moscow to "commandeer" (*po komandirovke*) lumber for urgent military construction.

Before the lumber arrived in Odessa, the directorate of the trust learned that the construction of the workshop had been temporarily discontinued. The lumber, no longer of use to the trust, was resold to another organization, which listed the 5000 rubles in its own books as expenses for "commandeering."

In April 1941 this organization brought a claim against the Odessa Trust for

return of the 5000 rubles. This claim was based simply on an extract from their bookkeeping office.

At the hearing in Gosarbitrazh[6] it appeared that the employees of the plaintiff's organization had no idea what this sum was for and how it had come to be reckoned as a debt to the Odessa Trust. During the months between the purchase of the lumber and the presentation of the claim, a new director, a new chief bookkeeper, and a new legal adviser had been installed.

The claim was rejected.

18. A PRE-CONTRACT DISPUTE

The producers' coöperative artel "Vinminvod"[7] brought a pre-contract dispute before the Odessa Regional Gosarbitrazh, requesting that the sales office of the Odessa Bread Trust be obliged to conclude a contract releasing rolls and confections for sale through the artel's trade network. The trust contended that the artel had no "funds" allocated by the People's Commissariat of Trade and so could not assert the right to conclude such a contract.[8] The Chief Arbiter, finding that "Vinminvod" did not have funds for the goods manufactured by enterprises of the Odessa Trust, denied the petition.

This decision evoked a number of questions among the leaders of the artel, which they set forth in an appeal to the Chief Arbiter of the Council of People's Commissars of the USSR. The artel wrote: "Can it be that a buyer's formal lack of funds, if the products in fact exist, deprives that buyer of the right to enter into contracts?"

The Chief Arbiter of the Council of People's Commissars of the USSR affirmed the decision. In addition, he wrote a special opinion in which he described the reasoning of the appeal as indicative of a lack of comprehension of the fundamental nature of a planned economy. Entering into contracts for the supply of funded products in the absence of funds is illegal and impermissible. The Chief Arbiter also explained that there could be no talk of contractual discipline, if the contract in question is illegal. As to the question of "formal absence of funds while the products in fact exist," the Chief Arbiter reminded the artel that baked goods are funded; that is, the procurement and supply is bound up with the process of execution of the whole national economic plan issued by the government.

19. THE CASE OF THE RESORT BISCUITS

In the spring of 1938, the sales office of the Odessa Bread Trust concluded a contract with the mineral waters section of a health resort administration, for sixteen carloads of tea biscuits corresponding to samples which had been attached to the written contract. Soon after the first four carloads had arrived at their place of destination, the buyer telegraphed to halt further shipment, because (he claimed) the baked goods did not meet the standard approved by the People's Commissariat of Food Industries. Since the directorate of the trust was firmly convinced that the goods were in strict conformity with the standards and with the samples the buyer had received, it was decided to delegate the chief legal adviser and the manager of the plant that had baked the biscuits to settle the dispute on the spot.

On their arrival, they ascertained the following: The buyer, early in the winter of 1938, had lacked "funds"[9] to stock up on the high-quality biscuits manufactured by the Confectionery of the People's Commissariat of Food Industries. Fearing that he would be left without any baked goods whatsoever for his clientele, with the resort season about to open, and (since the resorts of the northern Caucasus and Sochi occupy a special position in the USSR as far as supplies are concerned) in a first-class district such as that, he decided to procure ordinary tea biscuits from the Odessa Trust—biscuits that were rather more suitable for the needs of rural consumers than for the ill or convalescent clientele of a health resort. After having concluded the agreement with the Odessa Trust, however, he unexpectedly received authorizations (*nariady*) to have baked goods of the most excellent quality dispatched for his needs from the confectionery plant of the Confections Administration. Having thus acquired sixteen carloads of baked goods which he did not actually need, he seemed to have gotten himself into a difficult situation. He had already received the first four carloads. In order to stop further shipments, he resorted to a stratagem often used by Soviet administrators when, for some reason or other, they do not want to accept goods already contracted for. That is to say, he raised the question of quality.

An investigating commission which was appointed found that the baked goods conformed to the technical requirements prescribed by the contract, but that due to the large proportion of sugar to fat they were so hard that the resort's clientele would probably have to visit their respective dentists by the time the season was over. The commission found, also, that the buyer had obtained an excellent selection of baked goods from the Kharkov plant of the Confections Administration at significantly lower prices than those at which they had purchased the products of the Odessa Trust. Under such circumstances, the parties agreed that the buyer, on behalf of the seller, should resell the four carloads to Kalmuk trading organizations at the price stipulated in the contract, and that the rest of the contract should be considered as having lost its validity.

The buyer resold the four carloads, however, at a price much lower than that of the contract, on the ground that he had acquired other baked goods of the highest quality at this lower price.

The Odessa Bread Trust brought suit in Gosarbitrazh for the difference in price. There the buyer insisted not only on the lower price, but also, in accordance with instructions issued by Gosarbitrazh in 1932, on a penalty equal to the reduction.[10]

The Odessa Trust asserted that, first of all, the buyer knew perfectly well the quality of the merchandise he had acquired by the contract, since he had been sent accurate samples; second, the price had been confirmed by the People's Commissariat of Food Industries of the USSR; and third, if the buyer had gotten baked goods unsuitable for his clientele, he had only himself to blame. He himself, therefore, should bear the losses incurred. They should not be imposed on the Odessa Trust, which (not to mention the fact that it, too, had borne losses in the transaction and had not been able to fulfill its plan because of it) had acted quite conscientiously toward the buyer, with an understanding of his difficult position.

The arbiter, agreeing with the arguments of the Odessa Trust, rejected the buyer's claim and informed the procuracy of the mismanagement by the administration of the resort.

20. ODESSA UNION OF COÖPERATIVE SOCIETIES *v.* ODESSA BREAD TRUST

The Odessa Bread Trust contracted to deliver to the Odessa Union of Cooperative Societies 800 tons of biscuits in the second quarter of 1938 (that is, from April 1 to June 30). This agreement with regard to biscuit deliveries had been concluded in accordance with an order of the Chief Administration for Bread of the USSR, which had informed the Odessa Trust that sale of biscuits to consumers' coöperatives had been planned by the Economic Council (*Ekonomsovet*) of the Council of People's Commissars of the USSR, and that the Odessa Bread Trust was to deliver 800 tons as its share to the Odessa Union of Cooperative Societies. However, when the Odessa Bread Trust requested the Chief Administration for Bread of the USSR to send out permits (*nariady*) for ingredients, such as flour, sugar, and butter, it appeared that the Economic Council, in planning the production of biscuits, had made the mistake of overlooking the Odessa Trust and had not included it in its list of trusts authorized to obtain necessary ingredients. Thus, the Odessa Bread Trust, not having the requisite flour, butter, sugar, and so forth, could not fulfill its agreement for delivery, and reported this fact immediately to the Odessa Union of Coöperatives. Nevertheless, on expiration of the time set for delivery according to the agreement, the Odessa Union of Coöperatives brought a claim in the Odessa Gosarbitrazh against the Odessa Bread Trust for breach of contract.

The trust presented the exhaustive correspondence in this matter at the session of Gosarbitrazh. However, Gosarbitrazh awarded 64,000 rubles to the Odessa Union of Coöperatives, explaining that the Union of Coöperatives had no interest in the internal discords of the Chief Administration for Bread of the USSR and that the Union of Coöperatives was faced with a loss owing to failure to receive biscuits according to the agreement. The object of the award was to replace, at least partially, losses of an amount difficult to determine.

The Odessa Trust appealed to the Council of People's Commissars of the Ukranian Soviet Republic.[11] The Council of People's Commissars, however, left the decision of the Odessa Gosarbitrazh in force, agreeing fully with its reasoning.

Then, by appeal of the Chief Administration for Bread of the USSR, the case was transferred to the Council of People's Commissars of the USSR. The Council of People's Commissars, acknowledging that there had indeed been "discrepancies" in the activities of the Economic Council, nevertheless declared the decision of Gosarbitrazh to be correct.

21. ODESSA BREAD TRUST *v.* "THE RED NEEDLEWORKER" (1)

In a contract concluded between the Odessa Trust's Tiraspol Bakery and the producers' coöperative artel "The Red Needleworker,"[12] which involved sewing special clothes for the bakery's needs, a stipulation was included, freeing the artel from contractual obligations, should the artel not receive the necessary material. The Odessa Trust sued on the contract in the Odessa Regional Gosarbitrazh. In defense, the bakery argued the above mentioned "escape" clause.

Gosarbitrazh held: The defendant's objection—that the contract has not been fulfilled because the necessary materials have not been received, an eventuality provided for in the contract by a clause releasing the artel from responsibility—is unworthy of acknowledgment. The inclusion of such a stipulation in a

contract is illegal, and an illegal stipulation in a contract can bear no legal consequences. Further, to allow such a clause would reduce contract discipline to nought.

Gosarbitrazh therefore designated a time limit for delivery of the remaining batch of special clothes and ordered that a penalty and forfeiture be exacted from the artel should it fail to carry out the contract.

22. ODESSA BREAD TRUST *v.* "THE RED NEEDLEWORKER" (2)

In 1939 the Odessa Bread Trust gave 5000 meters of material to the producers' coöperative artel "The Red Needleworker," to be fabricated into special clothes for the bakery workers of the trust. The artel fulfilled only part of the order. A correspondence entered into on this account produced no results, and the Odessa Trust was compelled to appeal to Gosarbitrazh with a request to require the defendant to deliver the manufactured goods according to contract, in the quantity and of the pattern agreed upon; that is, according to the initial calculation of the quantity of special suits that were to be manufactured by the artel from the 5000 meters of cloth the trust had delivered to it.

At the hearing in Gosarbitrazh the defendant declared that he had "cut" incorrectly. As a result of his mistake more material was used per suit than had been intended, and he was in no position to deliver more suits because he had no more material. Acknowledging his mistake, he agreed to repay the trust the cost of the material that should have gone into the quantity of suits stipulated by the contract.

The indignant arbiter first of all belabored the representatives of the trust, accusing them of having entered into a commercial agreement with swindlers; the trick played with the state's material was more than obvious. The representatives of the trust for their part declared, also indignantly, that they had assumed they were concluding an agreement with a producers' coöperative organization, and that such an outcome had never entered their heads.

The arbiter had no choice but to order the defendant to pay the cost of the material he had failed to deliver. The representatives of the coöperative scarcely seemed to mind being called swindlers; and smiled broadly, quite pleased with the arbiter's decision.[13]

The Odessa Trust opened its own sewing workshop for the fabrication of special clothes in order to avoid similar incidents in the future.

23. ODESSA BREAD TRUST *v.* TIRASPOL FOOD SUPPLY ORGANIZATION

In December 1934 the Chief Administration for Bread of the USSR informed the Odessa Bread Trust that it had shipped to it a truck for use by the trust's Tiraspol Bakery, in accordance with an authorization of the People's Commissariat of Food Industries of the USSR. At the same time, the Odessa office of Gosbank deducted the cost of the machine from the account of the Odessa Trust, according to the supplier's draft which the trust had accepted. In February 1935 the trust learned, however, that the railroad had, by mistake, delivered the truck to the Bread Department of the Tiraspol Food Supply Organization instead of to the Tiraspol Bakery. When a claim was made to the Food Supply Organization in this connection, it refused to turn over the truck to the bakery.

The Odessa Trust wanted a speedy resolution of the conflict; also it wanted the truck itself and not simply a cash reimbursement for it. It therefore did not bring suit against the railroad, but instead brought suit against the Tiraspol Food Supply Organization in the Gosarbitrazh of the Council of People's Commissars of the Moldavian Autonomous Republic.

Gosarbitrazh acknowledged the right of the Odessa Trust to the disputed goods, but requested the representatives of the trust nevertheless to consider the Bread Office of the Tiraspol Food Supply Organization as a poor unit which had no truck of its own, though it needed one badly, and which was willing to pay the Odessa Trust in full. The representatives of the trust replied that they were not authorized, that they had no right, to trade with goods strictly planned and assigned from the funds of the Chief Administration for Bread for the specific needs of the Tiraspol Bakery. How utterly amazed the directorate of the trust was, therefore, when the decision handed down by Gosarbitrazh stated that although the Odessa Trust had every right to the disputed truck, the arbiter, considering the difficult position of the Bread Office of the Tiraspol Food Supply Organization, had nevertheless decided to leave the disputed machine at the disposal of the defendant and to oblige him simply to compensate the Odessa Trust for its cost.

The Odessa Trust carried an appeal to the Chief Arbiter in the Council of People's Commissars of the Ukrainian SSR, pointing out that the decision of the Gosarbitrazh of the Council of People's Commissars of the Moldavian Autonomous Republic violated all the basic principles of business accountability and planned supply and essentially justified and sanctioned the arbitrary actions of the defendant by referring to his "difficult position" and his need of auto-transport. The Chief Arbiter of the Ukrainian Council of People's Commissars reversed the decision of Gosarbitrazh and obliged the defendant to deliver the disputed truck to its proper owner within a week's time. At the same time, he called to the attention of the arbiter of the Moldavian Gosarbitrazh, which had handed down the mistaken decision, the fact that the arbitration court presided over by him, instead of strengthening business accountability and planning discipline by its decisions, had sanctioned the arbitrary actions of the defendant.

24. THE LIABILITY OF A MIDDLEMAN

The Procurement Office of the Odessa Bread Trust bought from the Procurement and Supply Association one hundred pairs of boots for the needs of the fire brigade. Upon receipt the boots were found satisfactory, and they were dispatched to the trust's bread plants for the use of the workers of the fire brigade.

Some time later, the bread plants declared that the boots were absolutely unserviceable, and they refused further deliveries, returning to the trust those which had not yet been distributed.

The trust, considering that it had suffered a loss as a result of this transaction, brought suit in the Odessa Gosarbitrazh against the Procurement and Supply Association. In the course of the proceedings the Disabled Veterans' Coöperative "Third Five-Year Plan," the producer of the footwear, was summoned as a third party at the request of the Procurement and Supply Association. An expert opinion, ordered by the court for the purpose of ascertaining the quality of the boots, established that they were of very poor quality.

The representative of the Procurement and Supply Association did not acknowledge the claim, pointing out that as a commission agent it was not responsible for the quality of the boots, and furthermore, that the plaintiff having received the samples, accepted the merchandise without reservation so that he had no right subsequently to point to its deficiencies and to claim damages.

The Odessa Regional Gosarbitrazh rejected the claim of the Odessa Bread Trust, basing its decision on the fact that the Procurement and Supply Association participated in the transaction solely as commission agent of the producers' coöperative, and did not take upon itself the obligations of a *del credere*.[14] It had acted correctly and it bore no responsibility. The principal, *i.e.*, the cooperative, which participated in the suit as a third party, bore sole responsibility.

On appeal of the Bread Trust, the Chief Arbiter handed down the following decision: In finding that the Procurement and Supply Association bears no responsibility because it was only a middleman in the transaction, the arbiter approached the question correctly, but correctly from the formal point of view only. In order to arrive at a correct solution of the question who ought to bear responsibility, the Procurement and Supply Association or the Disabled Veterans' Coöperative, the arbiter should have ascertained whether—if the Procurement and Supply Association figured only as a middleman—the payment was transferred to the Disabled Veterans' Coöperative and what compensation the Procurement and Supply Association received. In addition, the arbiter should have directed his attention to the clarification of the actions of the trust's management after receipt of the unserviceable goods.

Therefore, the Chief Arbiter instructed the arbiter to verify all the circumstances and to hand down a new decision.

25. ODESSA BREAD TRUST *v.* UNION FOOD PACKAGE TRUST

The Procurement Office of the Odessa Trust needed boxes in which to pack biscuits. It entered into a contract with the Kharkov Office of the Union Food Package Trust, whereby the latter was supposed to deliver the boxes at the place of manufacture. The Procurement Office of the Odessa Trust then requested the Kharkov Bread Trust to pick up the sets of boxes and to ship them to Odessa.

When the first batch of boxes arrived in Odessa, the Procurement Office informed the Food Package Trust that the boxes were defective, and tried to stop further shipment. But the representative of the Kharkov Bread Trust, who had picked up these boxes at the supplier's plant, recommended to the supplier that it continue shipment. Thus the sets of boxes which arrived in Odessa lay about the trust's sawmill for more than half a year without being used.

The Union Food Package Trust delegated a special commission to go to Odessa in order to ascertain how extensive the defects were and how they might be corrected. The supplier's representative, on arriving in Odessa, entered into a contract with the producers' coöperative artel "The Package," which provided that the artel should take on itself the job of fixing the boxes, costs to be borne by the Union Food Package Trust.

However, the Odessa Trust refused to supply either the premises necessary for carrying out this job, or the necessary instruments, or the transportation needed, since it seemed that to do so would cost the supplier more than if it were to make new boxes. The upshot of all these negotiations was that the Odessa Trust applied to Gosarbitrazh of the Council of People's Commissars with a claim

against the Union Food Package Trust for the price paid for the boxes and for an order obliging the supplier to remove these sets from the Odessa Trust's sawmill.

Gosarbitrazh decided that since the boxes had been supplied according to contract and accepted by the Kharkov Bread Trust, acting as the Odessa Bread Trust's representative; and since the Union Food Package Trust had agreed to correct the defects itself and at its own expense, for which purpose it had delegated representatives on the spot, whereas the Odessa Trust rendered no assistance at all; therefore, the Odessa Trust's claim should be denied, and further, the actions of the Kharkov Trust's representative, who as agent for the Odessa Trust had accepted obviously defective boxes, should be brought to the attention of the People's Commissariat of Food Industries of the USSR.[15]

26. MILITARY PROCUREMENT *v.* ODESSA BREAD TRUST

In January 1941 Military Procurement negotiated with the Odessa Trust for delivery of rolls and confections.[16] When Military Procurement became acquainted with the contract for delivery which had been drafted by the trust, it declared itself at variance with a number of provisions which it considered illegal and unacceptable. The heads of the trust, however, refused to sign a protocol of disagreements, and declared that if Military Procurement would not agree to the conditions of the proposed contract, the goods in question would be sold to other organizations. Considering this a distortion of the principles of Soviet trade and a reflection of higgling tendencies, Military Procurement requested Gosarbitrazh to examine avowed disagreements on drafting the contract and to oblige the Odessa Trust to conclude a contract for delivering the goods.

At the session of Gosarbitrazh it became apparent that Military Procurement's assertions did not correspond to reality. At the time the contract between the parties had been agreed upon, Military Procurement had offered no objections, but had nevertheless subsequently refused to sign the contract. The trust had then issued a warning to the effect that refusal to sign the contract by February 15, 1941, would be considered equivalent to the buyer's withdrawal from the transaction. Moreover, the trust had informed Military Procurement that it would accept *some* of the supplementary articles requested with regard to the contract. In spite of this warning, Military Procurement had continued to put off concluding the contract. In these circumstances, the Odessa Trust, having waited until May, had sold the product in question to the Odessa Regional Union of Consumers' Coöperatives.

The problem concerned non-funded goods.[17] Having acquainted himself with the actual circumstances of the case, the draft contract and the course of negotiations, the Chief Arbiter refused Military Procurement's request, on the ground that the non-funded goods had already been sold by the Odessa Trust, after much procrastination on the part of Military Procurement when it came to concluding a contract.

27. ODESSA BREAD TRUST *v.* ODESSA REGIONAL OFFICE OF GRAIN SUPPLY

The Odessa Bread Trust brought before the Odessa Regional Gosarbitrazh a claim for the price paid for sixteen tons of poor quality wheat flour delivered by the Odessa Regional Office of Grain Supply[18] to the trust's Kirovgrad Bak-

ery. The trust claimed, in addition, a penalty (according to contract) and an order obliging Grain Supply to take the flour back. Gosarbitrazh satisfied the claim. This decision was appealed by Grain Supply, which pointed out that the bakery, on receiving the flour, had proceeded to sell eleven tons to the Workers' Procurement Office[19] of a farm-machinery plant in Kirovgrad and had itself used what was left of the batch. By order of the Chief Arbiter, the original decision was suspended and the case assigned for a new hearing.

During the second examination, it was ascertained that part of the flour—two to four tons—had been used by the Kirovgrad Bakery to make bread samples, and the rest had been sent to the laboratory, which, on analysis, came to the conclusion that the flour was not up to standard, containing mineral impurities bitter to the taste, and that bread baked from this flour was not fit to eat because it contained a large quantity of sand. Twelve tons of this rejected flour had been sold to the Workers' Procurement Office of the farm-machinery plant "October Revolution" to provision its workers. According to the manager's statement, the flour had been transferred on the basis of a distributive order of the District Supply Office.

The Chief Arbiter established that the Odessa Office of Grain Supply had delivered a batch of flour unfit for baking bread. The Office of Grain Supply had refused to take this batch of bad flour back, but on the other hand the bakery had not taken thorough measures to compel Grain Supply to take it back. Subsequent sale of the flour to the Workers' Procurement Office was essentially an unauthorized release of bread, and consequently a direct violation of the laws of planned trade turnover. Flour clearly unfit for consumption had been assigned to provision workers. Therefore, the Chief Arbiter ordered the decision of Gosarbitrazh to be set aside and exacted 18,000 rubles from the Odessa Regional Office of Grain Supply—this sum including a penalty for breach of contract as well as the cost of the bad flour. For deliberate use of spoiled flour by the Kirovgrad Bakery and the Workers' Procurement Office, as well as for the irregular disposal of the flour, those responsible were to be called to account.

28. KHARKOV OFFICE OF PAPER SALES *v.* GOSBANK

In 1939 the Kharkov Office of Paper Sales entered into a contract with the Supply Office of the Odessa Trust for delivery of wrapping paper for confections. The paper was shipped at a time later than that specified by the contract. The seller's draft was accepted by the supply office, but not by the office of Gosbank, which refused payment because the paper had been dispatched at a later time than called for in the contract.[20] The Office of Paper Sales then brought a claim before Gosarbitrazh of the Council of People's Commissars of the Ukrainian Soviet Republic, requesting payment for the dispatched paper.

In view of the fact that the claim was made on the basis of a draft accepted by the Odessa Trust, Gosarbitrazh refused jurisdiction, on the ground that Gosbank's refusal to pay ought to be appealed to Gosbank's chief administration in Moscow. At the same time, Gosarbitrazh informed Gosbank of the unlawful actions of its Odessa office, pointing out that the office's refusal to pay a draft accepted by the buyer had been incorrect. The fact that one of the contracting parties had violated the time limit set by the contract was not sufficient reason for Gosbank to refuse to pay the draft if the buyer had accepted it.[21]

29. SOUTHWESTERN RAILROAD *v.* ODESSA BREAD TRUST

The Chief Administration for Flour shipped the Odessa Bread Trust nineteen carloads of flour in 1941. When calculating the railroad fees, the railroad made a mistake, on account of which the administration of the Southwestern Railroad charged 1500 rubles less than the transportation fees should have amounted to in fact. When requested to pay these arrears, the Odessa Bread Trust, though not questioning that a mistake had occurred, declared that it was unable to acknowledge the claim, because the freight fees, as charged by the railroad, were included in the calculation of the prices of products which were produced by the Odessa bread plants, and that additional payment of the arrears would spell loss to the Odessa Bread Trust.

Because of the trust's refusal to satisfy the claim, the railroad management brought suit against the trust in the Odessa People's Court, which gave judgment for the railroad.[22]

The Odessa Trust took an appeal from the decision of the People's Court to the Odessa Regional Court, which reversed the decision and dismissed the case because the lower court had failed to take into account that the mistake in computing the freight fees had been made by the railroad, and that the bread plants had calculated the net cost of their products on the basis of the transportation fees charged in the bill of lading, so that additional payment would undoubtedly cause a loss to the trust; and that the trust, therefore, would have a right to claim from the railroad damages of the same amount.

At the protest of the Procurator, the case came by way of supervision before the Supreme Court of the Ukrainian Soviet Republic. This court made a very important ruling which was of great significance for the economic organs and caused some of them to employ quite a number of specialists for the application of railroad tariffs.

The Supreme Court declared that the claim of the management of the Southwestern Railroad against the Odessa Bread Trust stemmed from a contract of railroad transportation, and the dispute ought consequently to have been resolved in strict conformity with the Railroad Regulations, according to which arrears arising from the application of a wrong tariff or from error in computation are subject to supplementary payment, and overcharges are subject to return.

Therefore, the Supreme Court said, the entire reasoning of the Odessa Regional Court concerning losses which were sustained by the bread plants because of the faulty computation of the railroad transportation fees, and also concerning the right of the Odessa Bread Trust to claim damages from the railroad, has no foundation in the law. Payment for services rendered by the railroads to owners of cargo are strictly regulated by the railroad tariffs. Hence, the cargo owner is always in a position to correctly calculate the transportation costs according to the railroad tariffs. The law gives him no right to claim compensation from the railroads for faulty computation, and consequently no such right can be adjudged to him by the court. The ruling of the People's Court was therefore affirmed, and the decision of the Odessa Regional Court set aside.

Notes

15. RED TAPE

1. For a discussion of cases interpreting these decrees, see Berman, *Justice in Russia,* pp. 68–70.

16. DIVISION OF COMMUNAL ECONOMY

2. The division of communal economy is an administrative board which is responsible for city planning, regulation of housing and of land utilization, and the apportionment and registration of land. See Berman, "Soviet Property in Law and in Plan," *University of Pennsylvania Law Review,* XCVI (1948), 324, 338.

3. Article 171 of the Ukrainian Civil Code, which is identical with the RSFSR Civil Code, states: "The contract of lease may be, prior to the expiration of the term, rescinded by the court at the request of interested parties and institutions in the following cases:

"(*a*) If the lessor fails to surrender the property stipulated to the use of the lessee;

"(*b*) if the lessor fails, within the time stipulated, to make repairs which he is obligated to make or if the property, by virtue of circumstances for which the lessee is not liable, falls into a state unsuitable to the use stipulated;

"(*c*) if the lessee, intentionally or through negligence, causes the condition of the property to deteriorate;

"(*d*) if the lessee fails to use the property in conformity with law, contract, or the purpose of the property;

"(*e*) if the lessee of living quarters makes it impossible, by his conduct, for other tenants to continue joint habitation with him in the room or apartment;

"(*f*) if the lessee of a governmental enterprise fails, within the stipulated time, to increase production to meet the schedules fixed by the contract;

"(*g*) if the lessee fails to make within the established period repairs which he is obliged to make;

"(*h*) if the tenant does not pay rentals for living quarters within three months from the day payment was due;

"(*i*) if it is necessary to make capital repairs of the premises, provided that after such repairs are made living quarters must be furnished to persons who resided there prior to the repairs if they so desire."

4. Article 1 of the Civil Code states. "The law protects private rights except when they are exercised in contradiction to their social and economic purpose." For a discussion of the fate of this article, see Berman, *Justice in Russia,* pp. 26–27, 47.

17. COMMANDEERING

5. See Chapter II, Case 10 and note 5.

6. Gosarbitrazh is a special system of courts in which are heard cases involving disputes between state business enterprises. Its nature and functioning are described in Berman, *Justice in Russia,* pp. 63–78.

18. A PRE-CONTRACT DISPUTE

7. On producers' coöperatives see Chapter II, note 12. In the present case "Vinminvod" (an abbreviation for wine and mineral waters) was a so-called "invalids' artel," consisting of disabled veterans and of workers disabled by industrial accident or occupational disease. Such invalids' artels generally produce mass consumption products such as carbonated water, pies and other confectioneries, wine, etc.; or else they render services in the transshipment of freight. They exercise the rights of juridical persons, just like other state and coöperative organizations.

8. Each year the Council of Ministers distributes so-called "funds" among the various ministries, which in turn redistribute them among their subordinate Chief Administrations (*glavki*). The glavki break down the funds in the form of permits (*nariady*) to their subordinate trusts and enterprises. Not all goods are "funded"; some are allotted by quotas and some are subject to no special allotment whatsoever. See in general Berman, "Commercial Contracts in Soviet Law," *California Law Review,* XXXV, 191, 199–200. Bread is a funded product, and therefore it cannot be purchased by a trading organization unless such organization has been allotted the proper fund.

19. THE RESORT BISCUITS

9. See above, note 8.

10. An essential element of contracts between Soviet state business enterprises is the penalty clause. The penalties may be measured at a percentage of the cost of the goods, or they may be fixed at a definite sum. If they are disproportionately high, the court may reduce them; and if the parties fail to insert any penalty clause at all, the court will supply it if suit is brought on the contract. See Berman, "Commercial Contracts," pp. 224–225.

20. UNION OF COÖPERATIVES

11. Each Republican Council of Ministers has its own Gosarbitrazh which is subordinate to it. Also, the USSR Council of Ministers has an All-Union Gosarbitrazh. An appeal may be taken from the decision of Gosarbitrazh to the Council of Ministers. See Berman, *Justice in Russia,* pp. 63–64.

21. "RED NEEDLEWORKER" (1)

12. On the producers' coöperative artels, see Chapter II, note 12.

22. "RED NEEDLEWORKER" (2)

13. Under Soviet rules on the measure of damages, the producers coöperative was liable only for the price which the Bread Trust had paid for the cloth, since this was the loss sustained at the time of trial. Under conditions of great scarcity of commodities, together with price control, the producer was happy to be relieved of its responsibility to furnish the finished product. Normally, the Soviet Court would have compelled it to carry out this responsibility, but under the circumstances that was not possible since apparently it could not itself obtain comparable materials. On the Soviet law of damages in contract cases, see Gsovski, I, 440 ff.

24. LIABILITY OF A MIDDLEMAN

14. Under the Civil Codes, the Soviet commission agency is an agreement whereby the commission agent transacts business in his own name but on account of another, his principal. Whether or not the agent discloses his principal, the agent alone is responsible to third parties with whom he contracts. The agent is liable to the principal for performance by such third parties only if the agent guarantees such performance, in which case he is called a *del credere.* See RSFSR Civil Code, Arts. 275 *a–y.* The *del credere* commission agency is defined similarly in Continental European and Anglo-American law.

25. UNION FOOD PACKAGE TRUST

15. Gosarbitrazh plays an important rule in "signalizing" misconduct to administrative bodies for appropriate penalties. See Berman, *Justice in Russia,* p. 103.

26. MILITARY PROCUREMENT

16. Military Procurement, Mr. Konstantinovsky explains, was simply the procurement office of the army.

17. Non-funded goods are those products whose distribution is not dependent upon the prior issuance of authorizations or permits (*nariady*) to the buyer. See above, p. 28 and p. 44, note 8.

27. GRAIN SUPPLY

18. See above, p. 4 and p. 11, note 5.

19. Workers' Procurement Offices may be established in individual factories and plants for the procurement of supplies (especially food supplies) for the workers of the particular establishment. They were of importance during the rationing periods prior to 1936 and in the war years.

28. PAPER SALES *v.* GOSBANK

20. On the supervision of contracts by Gosbank, see above, Case 10.

21. Gosbank is not subject to the jurisdiction of Gosarbitrazh in any case; it may be sued only in the regular courts. In this instance, however, Gosarbitrazh seems to have heard the parties and stated a rule of law before declining jurisdiction.

29. RAILROAD *v.* BREAD TRUST

22. Suits involving the railroads are heard not in Gosarbitrazh but in the regular courts.

IV

LABOR LAW

INTRODUCTION

It is sometimes said that the Soviet factories "belong" to the workers. If the word "belong" connotes ownership, then the statement is true only if the workers may be identified with the State; in modern Soviet theory, however, the Soviet State is identified with the entire people—"workers, peasants, and intelligentsia"—so that it would be just as true to say that the peasants, or the managers and other members of the intelligentsia, own the factories. As applied to ownership of an individual factory by the workers of that factory, the statement is surely erroneous, since neither individually nor through their trade unions do Soviet workers have, as regards the factory, any of the rights of possession, use, or disposition traditionally associated with ownership.

Management of a Soviet factory is legally the monopoly of the factory director. In fact, the "triangle" of director, secretary of the factory's Party organization, and chairman of the union factory committee, which flourished in the early thirties, has continued to exist informally in many factories. However, Professor Konstantinovsky reports that it is entirely within the director's discretion whether or not to consult with anyone else in the factory. The trade union cannot lawfully interfere in the hiring of labor, in planning production or expansion, or in determining contractual relations with other enterprises; in regard to the firing of labor, reclassification, transfers, and payment of wages, it has no direct voice but only an indirect voice through the system of arbitration of grievances. The trade union's main job is the administration of workmen's compensation and of workers' welfare generally, and the exhortation of the workers to increase production. It cannot in fact resort to strikes. Within these limitations, the cases presented in this chapter indicate that the union officials connected with the Odessa Bread Trust were conscientious in protecting the rights of their members.

As far as the individual worker is concerned, his relations with the factory or enterprise are considered to be based on the individual labor contract between him and the factory or enterprise. Most of the conditions of this contract, however, are determined by the Labor Code, as amended by statutes. It is generally the Labor Code which provides the basis for decision of the cases here presented. (The relevant provisions are translated in the footnotes.) Some of its articles and particularly the drastic amendment contained in the decree of June 26, 1940, on voluntary departure and absenteeism, seem to put the Soviet worker in a strait jacket. On the other hand, the system of arbitration of grievances and the attitude of the courts seem to give him some relief. Indeed, Professor Konstantinovsky complains that the Soviet courts "lean over backwards" to protect workers in labor cases.

An interesting example is provided in a decision reported by Professor Konstantinovsky (not contained in this collection) relating to the above-mentioned

decree. The decree provides that any worker who without adequate reason voluntarily quits his job—that is, leaves without the permission of management—shall be subject to imprisonment from two to four months. The Supreme Court, according to Professor Konstantinovsky, held that a worker who had served his sentence under this law was not obliged to return to his former place of work and was free to choose any kind of job he wanted, on the theory that the conviction dissolved the labor contract. This decision could well have the effect of putting some pressure on managers to consent to the departure of those workers who otherwise might risk prosecution.

In general, Professor Konstantinovsky's cases support the view that Soviet law in action treats the worker more favorably than Soviet law in books would indicate. There are many ways legally to avoid the harsh laws which the government has enacted to counteract the relatively strong position which Soviet labor in fact occupies by virtue of its scarcity. At the same time, there are positive features of Soviet labor law which give it special interest; chief among these, in the editor's view, is the recognition given to the individual worker's need of protection against the expense and delay of litigation. The worker who appears as a plaintiff in a labor case is exempt from the payment of court costs and is entitled to the free, legal services of the union lawyer; the court must consider the case not later than five days after commencement of the suit; a decision in favor of the worker is subject to immediate execution to the extent of a month's wages; an overpayment to the worker is not ordinarily subject to return, on the ground that "the tightly limited budget of a worker should not be upset." These and other features of Soviet labor law illustrate the "parental" quality of Soviet law, its tendency to treat persons as youths to be protected, educated, disciplined, rather than as independent mature reasonable adults who may be expected to have calculated the risks of their conduct.

The cases that follow may be better understood if read in the context of the following description by Professor Konstantinovsky of labor relations in the Odessa Bread Trust.

I

The cadres of the Odessa Bread Trust and its subordinate enterprises are divided into: (1) responsible workers, (2) engineering-technical workers (I.T.R.), (3) workers, (4) employees, (5) junior serving personnel (the so-called M.O.P.).

Each of these groups is sharply distinguished both by its position in production and by a number of rights and privileges connected with that position.

The most privileged group in production, with the exception of the "responsible workers," are the engineering-technical workers. According to the resolution of the Central Executive Committee of the Council of People's Commissars of the USSR, of August 1, 1931, the following belong to this category: engineers, technicians, foremen and their assistants, overseers (*desiatniki*), agronomists, foresters, land surveyors, zoölogists, veterinarians, and economists filling technical jobs in production. By a resolution of the Council of People's Commissars of the USSR of September 29, 1932, chief and senior treasurers and their assistants of institutions, enterprises, and economic organizations of the socialized sector were added to this group.

It is apparent that this group includes not only engineers with a university

education and technicians with a secondary technical education but also a number of specialists who actually have nothing in common with engineers and technicians. However, the position of specialists in problems of law (that is, legal advisers of institutions and enterprises) was not provided for in the 1931 regulations. In those years the theory of the withering away of law, which the school of Pashukanis defended, ruled the roost. It was thought that through the institution of State Arbitration (Gosarbitrazh), institutions and enterprises of the socialized sector would be able to come to agreement without qualified legal workers. However, real life, with inexorable logic, demanded daily help for administrators by experienced consultants in questions of law. It was only toward the end of 1933 that the rights of legal advisers of institutions and enterprises were defined more or less precisely, and they were treated in the matter of rights and privileges as comparable to the engineering-technical workers. This circumstance had no small significance for legal workers in production enterprises.*

The engineering-technical workers in a production enterprise benefit from a number of privileges in obtaining provisions, procuring living-quarters, receiving sanatorium permits and passes to rest homes, in enjoying so-called engineering-technical workers' dinners in plant dining rooms, and similar privileges, to say nothing of the fact that engineering-technical workers received a month's leave annually, while ordinary workers and employees got only two weeks. Therefore, the extension of engineering-technical workers' privileges to legal advisers of institutions and enterprises indicated a decisive break in government circles on the question of regulation by law of the national economy and the refusal to replace legal regulation by pure administration.

Engineering-technical workers are divided into administrative specialists and production specialists. Although under the statute on privileges of engineering-technical workers, the production specialists are more highly privileged, actually the position of the administrative specialists is incomparably better. There are many reasons for this. One of the most important is the immense responsibility that weighs on specialists in production. In the first place, they are responsible for the quality of the bread which is baked as well as for the quality of other products.

There was an instance when the city of Odessa was left for several months without a number of confectionery goods because the chief engineer of the Bread Trust's confectionery plant, although he had almost all the materials necessary for baking the confections in the plant's warehouse, could not decide to start production, simply because the trust's Office of Procurement had not received any raisins from the Chief Administration for Bread. Chief Engineer Mendelson, an excellent technician and administrator, having been transformed (in his own words) into a "finished type" of bureaucrat, requested written permission from the trust's director to bake the confections without raisins in spite of the fact that the recipe of the Chief Administration for Bread insisted on them. The director of the trust did not grant the requested permit, knowing full well that it involved criminal responsibility under the law of December 8, 1933. According to that law, directors of trusts and enterprises and persons of the administrative technical staff who are guilty of producing poor quality goods are subject to deprivation of freedom for a period of not less than five years. Engineer Mendelson, for his part, understood full well that without the written permis-

* But see below, Case 35 and note 26.

sion of the director he would risk being brought to trial for manufacturing confections not up to standard, even though the population would have been only too glad to buy these goods without the prescribed raisins.

Engineering-technical workers in production also bear responsibility for accidents to workers. The legal practice of the Odessa Bread Trust's enterprises for the decade 1931 to 1941 showed that an outstanding number of court cases labeled "labor conflicts in production" were just such accidents. But the case reports cannot show the experiences and feelings which the chief engineer of a plant or the shift foreman lived through. A great number of cases involving this sort of affair show that the Labor Court's attitude is, as a rule, friendly to the plaintiff who has suffered in the course of production. Each time the chief engineer or the shift foreman were called to court as witnesses, sometimes as the representatives of management, they risked being brought to trial themselves for culpable negligence resulting in an accident in production. In one case of injury, the Labor Court handed down a decision against the bakery plant's administration only because there was no special instructor on technical safety in the plant. It cost the trust immense efforts to have this clearly idiotic decision reversed. The trust pointed out that the worker's accident had occurred solely because of her own gross carelessness, since instructions for handling had been written on all the machines, and since the shift foreman had warned her not to tamper with anything that was not properly her own job and to call the shift mechanic in case anything went wrong.

In addition to these responsibilities, the production specialists must work very long hours. By a decree of the Council of People's Commissars of February 13, 1928, engineering-technical workers were placed in the category of workers whose work is not limited by prescribed hours. They must be on the job as long as the interests of production demand. There have been instances when the chief engineer of a bakery plant literally spent his days and nights on production at a time when some kind of disorder was taking place in the plant, and such a disorder was almost a daily occurrence. Although the working day of engineering-technical workers in administration is similarly non-normalized, it is rare that any of these find themselves staying on the job later than six o'clock in the evening. An administrative engineer, except in very rare cases, can take advantage of his rest days. The same cannot be said of an engineer in production.

II

Bakery plant workers are subdivided into "direct producers" and those involved in "overhead expense" (that is, workers who have no direct part in production, but whose services are nonetheless necessary if production is to go on). The "productive" workers include bakers, kneaders, apprentices, floursifters. Among the "overhead" group are expediters, packers, wrappers, loaders, as well as the M.O.P. (junior serving personnel), which includes shop cleaners, janitors, watchmen, drivers, truck drivers, furnace stokers, couriers, and so forth. Shop workers—"direct producers"—by their position in production and by the extent of their privileges, occupy a place just below that of the engineering-technical workers. "Nonproducing" workers and the M.O.P., together with employees (office workers), are the groups most devoid of privilege. (It must be noted, however, that in some ways plant employees are in a more fortunate position than administrative employees of the trust.) Thus, for example, if the productive worker has some small chance of getting a ticket permitting him to enter the local sana-

torium or rest home during the summer health-campaign season, the rank and file employee has such a chance only in very exceptional cases.

In the USSR there are resort localities which have earned some praise, especially the resorts on the South Crimean coast and the Black Sea shores of the Caucasus. The experience has been that spring and summer months are very hot there, and up to the beginning of the grape season, workers of the bread-baking and flourmill industries had the opportunity to get tickets to the rest home belonging to the Flourmill Union's Central Committee, in Alupka, on the South Crimean coast (these workers constituting not more than from 10 to 15 per cent of those resting). But with the commencement of the autumn "velvet" season (that is to say, the month of August), workers are in general absent and the "places" in the rest home are occupied almost exclusively by highly placed workers of the Chief Administration for Bread of the USSR, the Central Committee of the Bakers' and Flourmillers' Union, directors of trusts, plant managers, engineering-technical workers, and their wives. This is why, among the youth in the USSR, there is such a compulsion to "study," with the sole aim of beating one's way into "fashion"—of pulling oneself out of the category of worker and into that of engineering-technical worker.

III

Under the category "responsible workers" or "official" come those Communist Party members who are heads of institutions and enterprises, the directors of trusts and subordinate enterprises. Non-Party specialists, whose capacities and skills "responsible workers" frequently lack, cannot be leaders in official positions. These positions are only for members of the Communist Party.

In the USSR, there is no Labor Exchange for the organized hiring of a labor force. Workers, engineering-technical workers, and employees are hired exclusively at the discretion of management. Responsible workers are sent to their jobs according to orders from local Party committees, to which they are accountable. Responsible workers are the most highly privileged, although a decade's experience shows that the enterprises of the Odessa Trust knew but few managers whose business qualities were worthy of the privileges and prerogatives accorded to them. For all the other managers of the Odessa Trust's enterprises, this position was simply a sinecure, since the real leaders of the enterprises were the chief engineers, non-Party specialists bearing on their shoulders the full burden of responsibility.

The circumstances that the overwhelming majority of enterprise-managers had been workers in the past and that the technical intelligentsia were rarely found in directive posts have created a special kind of relations between the administration of an enterprise and the toiling mass. Many workers remember their managers when they were all simple workers together, in no way different. Such a former worker who has become a manager thanks entirely to his membership in the Communist Party cannot and does not have authority among the workers. Therefore, many managers, being ignorant persons, quite frequently find themselves under the thumb of one of the chief treasurers or chief engineers of their enterprises. With the aim of lifting the general level of culture and literacy of responsible workers, a specially appointed faculty was organized. These teachers had the job of exposing responsible workers to the most elementary subjects of a secondary school. Considering the over-all cultural level, however, the degree of preparation, overwork on the job and on the Party line, one must admit that

the results these faculties achieved were very modest indeed. Thus the director of the Odessa Trust who had been exposed to this faculty for almost ten years, still could not pronounce the word "laboratory." But he was, nevertheless, one of the most capable leaders of the breadbaking industry.

IV

To conclude this description of relations between workers and management, mention should be made of production conferences. In the Odessa Trust's system, they were rarely called. On the eve of the outbreak of the Second World War such a conference was called in the Second Bakery Plant on the subject of "nepotism". The question of the permissibility of settling one's relatives onto jobs in various of the trust's enterprises, as the trust's chief treasurer had done, was discussed. Although the conference was rather stormy, and the chief treasurer's conduct was condemned, all remained as before. The trust's legal adviser argued that the law does not prohibit relatives from working in the same system or even the same enterprise, as long as their positions are not of such nature that they are accountable one to the other. At this, the "activists" assured the legal adviser that he badly misconceived the socialist society which had been built in the USSR.

Cases on Hiring and Firing

30. MANAGER S. *v.* ODESSA BAKERY

Denounced in 1938 in the District Party Committee as a Trotskyite, Mr. S., the manager of one of the bakeries of the Odessa Bread Trust, was called on for an explanation. On being questioned, he replied as follows: "You accuse me of being a Trotskyite, but actually I don't even know why Trotsky has been exiled from the Soviet Union." This answer evoked stormy indignation on the part of the District Party Committee. The secretary declared to S.: "If you don't know why Trotsky has been exiled, why, then, get out of the Party!" Several days later S. was arrested by the NKVD.

S. remained under arrest for about two months and was then released.[1] He was dismissed from his job as manager of the bakery, under Article 47 of the Labor Code, which permits the dismissal of an employee who has been under arrest for more than two months.[2] Sometime later S. was tried by the Special Board of the NKVD and was sentenced to a labor camp.[3]

Shortly after this decision, however, the head of the NKVD, Yezhov, was "liquidated," and the Special Board reconsidered its action and decided to dismiss the case against S. on the ground that the allegations against him did not contain the elements of any crime.[4] S. was then restored to his position as manager of the bakery. The management refused, however, to give him back pay for the period of his enforced absence, and S. therefore brought suit in the Odessa Labor Court.[5]

The Labor Court gave judgment for the bakery, relying on a law of May 21, 1925, providing that workers who are dismissed because they have been under arrest for more than two months are not entitled to back pay if they are subsequently convicted of the crime for which they were arrested.[6] This decision was upheld on appeal by the Odessa Regional Court.

The case was then reviewed by the Ukrainian Supreme Court, which reversed the decision of the Labor Court. It is true, the Supreme Court said, that management had acted in good faith and was within its rights in dismissing S. after two months under arrest, and it is also true that the original decision of the Special Board of the NKVD, if it had stood, would have relieved the management of the necessity to pay S. back wages for the period of his enforced absence. However, the original decision of the Special Board was changed by a decision of the same Special Board, and the charges against S. were finally dismissed as not containing any elements of a crime. The Labor Court should have considered this decision of the Special Board as having fully rehabilitated the plaintiff and as having therefore also entailed an obligation on the part of the defendant to reinstate him with back pay for the two months during which he was under arrest.

The Supreme Court rested its decision on another section of the same law of May 21, 1925, upon which the Labor Court had relied, which states that upon acquittal or discontinuance of the case of a person under arrest, the employer is obligated to pay back wages for a period of not more than two months.[7]

Finding no ground for a retrial of the case, the Supreme Court reversed the decision of the Odessa Labor Court and ordered the bakery to pay S. two months' back wages at his former rate of pay.

31. SKOTORENKO *v.* ODESSA BREAD TRUST

A criminal investigation was instituted against one Skotorenko, a storekeeper of the Odessa Bread Trust, because of a shortage of about half a ton of bread. At the order of the investigating magistrate, he was removed from his job and taken in provisional custody for about two months.[8] He was then released, pending trial.

When he attempted to come back to work after his release from prison, he was not admitted. The director of the plant inquired of the procurator about the possibility of reinstating Skotorenko to his job, but the procurator's reply got lost. Skotorenko insisted that the procurator had seen no obstacles to his being reëmployed, while the director of the plant understood the procurator to have left the decision up to him.[9] As a result of all these negotiations, Skotorenko was not admitted to work.

Soon afterward his trial was held and he was acquitted, on the ground that the shortage of one kind of bread was balanced by the surplus of another, and that (according to expert opinion) such balancing was permissible. After his acquittal Skotorenko requested to be reinstated with back pay for the time he had been obliged to stay away from his job. The director reinstated him but refused back pay, and Skotorenko brought suit in the Odessa Labor Court.

The Labor Court satisfied the claim, but on appeal by the trust the Odessa Regional Court set aside this decision and discontinued the case. The regional procurator then protested this ruling of the Regional Court to the Ukrainian Supreme Court, which, however, affirmed the decision, on the following grounds: It appears from the decision of the criminal court in the original trial of Skotorenko that he permitted the balancing of the shortage of one kind of bread by surpluses of another kind. The finding of the court that such balancing was not criminal does not alter the fact that Skotorenko was negligent in the exercise of his official duties. Under such circumstances the Regional Court was right in con-

cluding that the Odessa Bread Trust is under no obligation to pay him back wages for the time he was obliged to stay away from work because of the criminal investigation. As to Skotorenko's bare right to compensation on the basis of the law of May 21, 1925, that right is in contradiction with the actual circumstances of the present case.[10]

32. INSPECTOR S. *v.* ODESSA BREAD TRUST

An administrative inspector (there was such a position)[11] of the Odessa Bread Trust, Miss S., was removed from her job by a decision of the Regional Committee of the Bakers' Union, under Article 49 of the Labor Code permitting discharge at the request of the trade union.[12]

Her misdeed, as reported by the Komsomol brigade "Flying Cavaliers,"[13] consisted in eating some twenty tarts while inspecting the confectionery shop of one of the bakeries, and in ordering the dispatch office to wrap up another twenty for her to take home. When the brigade reprimanded her on the wrongness of such an action on the part of a responsible worker of the trust, Miss S. scolded the brigade, insisting that it was not for a mere bunch of Komsomols to teach her, an old Party worker.

Subsequently, however, the Regional Trades Council, pointing to the revolutionary activities of Miss S.—who had been a member of the All-Russian Communist Party since 1918, was a participant in the civil war, was wounded in engagements during the siege of Tsaritsin, and had never in any way dishonored herself in her work—revoked the decision of the Regional Committee of the Bakers' Union and recommended that the trust restore Miss S. to her former position.[14]

The director of the trust enrolled Miss S. in her old job, but refused to pay her for the time of her enforced absence. The Labor Court, on Miss S.'s claim, held that the enterprise had to pay for her enforced absence. On appeal, the Regional Court set aside this decision, arriving at the conclusion that in cases of dismissal under Article 49 of the Labor Code the enterprise should not be held financially responsible for the enforced absence, even if the dismissal were subsequently declared to be wrong.

Miss S. applied to the Procurator of the Republic, who protested the decision of the Odessa Regional Court. The Ukrainian Supreme Court handed down the following decision: The plaintiff, Miss S., was removed from her job at the request of a trade union organization, because of the perpetration, as it were, of an official crime. She should have been removed from her job, in this case, only at the request of judicial organs of investigation in accordance with the Instruction of the People's Commissariat of Labor of May 21, 1925,[15] and not at the request of the trade union in accordance with Article 49 of the Labor Code.

The intent of Article 49 is to provide the trade union with means to combat anti-union elements obstructing the fulfillment of tasks facing the trade unions. Article 49 should be applied only in exceptional cases having great consequence for the workers, and therefore, in applying it, sufficient guarantees must be observed so that a higher-ranking organ will be in a position to review its application upon complaint of either employer or employee without detriment to either.

When it received the request of the Regional Committee of the Bakers' Union concerning the dismissal of Miss S., the administration of the Trust acted on it immediately, not allowing the person dismissed time to lodge a complaint against

this ruling to a higher-ranking trade union organ. Article 49 does not obligate the employer to fulfill the request of the trade union immediately. Therefore, in such cases the dismissal of a worker cannot take place before the expiration of time allowed for appeal, and in the case of an appeal, not before the complaint has been resolved. The People's Commissariat of Labor and the All-Union Central Council of Trade Unions in the law of May 13, 1929, require the observation of this procedure of dismissal with reference to Article 49 of the Labor Code.[16]

Therefore, immediate dismissal at the request of the trade union imposes upon the management the responsibility of paying back wages for the period of enforced absence.

On this basis, the Supreme Court set aside the decision of the Odessa Regional Court and left the Odessa Labor Court's decision in force.

33. LISSAK *v.* THIRD BREAD PLANT

Lissak, a worker of the Third Bread Plant of Odessa, was dismissed from his job for having refused to be transferred to the First Bread Plant. He brought suit, requesting to be reinstated in his job. He justified his refusal to be transferred on the ground that such transfer was not required by the necessities of work, but was solely the result of a desire to get rid of him, because he had written in the wall newspaper about the unsatisfactory working conditions in the bread plant.[17]

The Labor Court found that Lissak had been dismissed because of his criticism of the director's actions, voiced both in meetings and in the press. Since there had been no ground to dismiss him, the court reinstated him to his job with award of four months' back pay for the time he had been obliged to stay away.

The Regional Court dismissed the appeal of the bread plant.

At the protest of the Regional Procurator, the Civil Collegium of the Ukrainian Supreme Court reversed the decision of the Labor Court on the ground that the management of the bread plant had acted in full conformity with Article 37 of the Labor Code, which provides that an employee may not be transferred from one enterprise or locality to another without his consent, but that if he refuses to transfer he may be discharged.[18] This decision was brought before the Plenum of the Supreme Court by protest of its president.[19] The Plenum handed down the following ruling:

1. The dismissal of a worker for refusal to be transferred to another enterprise, under Article 37 of the Labor Code, is permissible only if the transfer is in the interests of the business. If this article were interpreted otherwise, a transfer could always serve as a ground for circumventing Article 47 of the Labor Code which limits the right of the employer to dismiss workers by precisely enumerating the reasons for discharge.[20]

2. The Labor Court found that the transfer was not prompted by business considerations, but by the desire to get rid of a man who had criticized the management. Under these circumstances it was right in reinstating Lissak to his former job.

34. STOREKEEPER *v.* BAKERY

A storekeeper of one of the bakeries of the Odessa Bread Trust brought suit in the Odessa Labor Court for reinstatement and back pay, on the ground that

the director had wrongfully dismissed him for his refusal to be assigned as foreman in the same bakery.

In court, counsel for the management explained that the management was absolutely unable to understand the plaintiff's behavior, since in his capacity as storekeeper he earned 175 rubles per month, while the position of foreman which he had declined would pay at least 500 rubles per month in premiums for fulfillment and overfulfillment of the plan.

The judge, likewise very astounded at the storekeeper's refusal to accept an offer which would have almost trebled his salary, asked the plaintiff the reason for his refusal. The plaintiff replied that he was used to his job as storekeeper and he loved it so much that he was even prepared to put up with a salary that was quite modest in comparison with that of a foreman.

This statement made the audience laugh, as it was obvious to everybody that it was not the "love of his job" but something else that made the storekeeper cling to his position. This "something" was obviously the extra income he picked up from unlawful operations in the store and which, apparently, surpassed quite substantially the difference between the wage rates of a foreman and of a storekeeper.[21]

The court, too, understood the meaning of "habit" and "love for his job," and rejected the claim on the ground that the management of the factory had the right to assign him to another job pursuant to Article 37 of the Labor Code.[22] The plaintiff's appeal to the Odessa Regional Court met with no success.

35. LEGAL ADVISER K. *v.* VINMINVOD

In 1934, the Odessa producers' coöperative artel "Vinminvod" (Wines and Mineral Waters) curtailed a number of positions on the basis of a resolution of the All-Producers' Coöperative Union to the effect that its administrative expenses ought to be lowered.[23] The curtailment affected the legal section; where there had been two employees, a consultant and a legal adviser, it was decided to leave only one.

After some discussion of this problem, the artel's administration curtailed the position of legal adviser and left the consultant, Mr. S., in the reorganized set-up. The artel's legal adviser, Mr. K., appealed this decision in the Rates and Conflicts Commission unsuccessfully.[24] However, the Labor Inspection revoked the decision of the Rates and Conflicts Commission and K. thus had an opportunity to bring a claim before the Labor Court for reinstatement and back pay.[25] The Labor Court, however, rejected K.'s claim, finding K. irresponsible and less competent than S.

On K.'s appeal the Regional Court reversed this decision and reinstated him in his position with back pay from the day he had been dismissed to the day he would resume work, on the ground that the testimony given by the artel concerning K.'s irresponsibility was not borne out by the circumstances of the case, from which it was apparent that he had been a worker of the highest qualifications and integrity.

This case passed by way of supervision to the Supreme Court, which handed down the following decision:

1. The legal adviser of a state enterprise or of a social or coöperative organization, as a person who must have not only the appropriate technical qualifications but special trust as well, is a "responsible" worker, and under the Labor Code

the dismissal of a "responsible" worker may be appealed only through administrative channels and does not admit of discussion in courts of law.[26] Consequently, the court's decision concerning the reinstatement of K. cannot be left in force.

2. Moreover, the court's decision does not correspond to the circumstances of the case in so far as both the resolution of the Rates and Conflicts Commission and the decision of the Labor Court contain information to the effect that the work of the legal adviser had expanded significantly since K.'s dismissal, whereas *his* work had evoked complaints from his clients.

Therefore, the Supreme Court discontinued the case in the law courts, advising the interested parties to apply for resolution of the dispute to higher-ranking cooperative organizations.

36. FOREMAN S. *v.* BREAD PLANT

S., a foreman of one of the bread plants of the Odessa Bread Trust, was declared by the medical-control commission unfit for his job as a result of a nerve inflammation. The management of the bread plant relieved S. of his job and refused to pay him any compensation whatsoever, on the basis of paragraph *c* of Article 47 of the Labor Code providing for dismissal of workers who are unfit.[27] S. then applied to the social insurance agency for an allowance; he was examined, declared a disabled person of the fourth category, but was refused a pension.[28]

S. then requested to be reëxamined by the Bureau of Medical Expert Testimony, which declared him healthy and fit for work. However, the management of the bread plant rejected his request for reinstatement, and S. brought suit in the Labor Court. The court held that the dismissal was justified on the basis of the conclusion of the medical control commission, and therefore rejected the claim for reinstatement but awarded him discharge pay.[29] No appeal was made and this decision became final.

A short time after the decision was handed down, the management of the bread plant re-hired S. in his former job, but declined to pay wages for the period of the lay-off. S. again sued, but the Labor Court held that since the dismissal had been declared justified by a previous ruling of the Labor Court, the claim for wages for the period of his lay-off could not be granted. The Odessa Regional Court denied S.'s appeal.

At the protest of the procuracy of the republic, the case came before the Ukrainian Supreme Court, which handed down a decision of basic significance.[30] The Supreme Court stated that the conclusion of the medical-control commission concerning the unfitness of a worker for his job does not give management the right automatically to dissolve the work contract. Such a worker may be dismissed only by a decision of the Rates and Conflicts Commission and only if it is impossible to give him another job appropriate to his health.[31]

The Supreme Court therefore reversed both decisions of the Labor Court, discontinued the matter concerning S.'s reinstatement as being no longer the subject of a dispute between the parties, and remanded the suit for back pay to the Labor Court for retrial by other judges.

37. CHERNOZUBOVA *v.* ODESSA BREAD TRUST

Miss Chernozubova was hired as a temporary worker for packing bread in one of the bread plants in Odessa. In connection with a curtailment in production,

all temporary packers had to be dismissed, but when a permanent job became vacant the management agreed with the factory committee to fill this job with the temporary worker Anesovich. Chernozubova applied to the Rates and Conflicts Commission, asking that she be retained on the staff instead of Anesovich.

The Rates and Conflicts Commission examined her request and rejected it, since Anesovich was properly qualified for the job. The Labor Inspection of the Odessa Regional Committee of the Bakers' Union reversed this decision, however, on the ground that the Rates and Conflicts Commission failed to take into consideration Chernozubova's economic situation as well as the fact that she was a single woman. The case then came before the Odessa Labor Court, which reinstated Chernozubova to the job for the same reasons as those offered by the Labor Inspection. This decision was affirmed by the Regional Court on appeal.

The Odessa Bread Trust turned to the procuracy of the republic with the request to protest the decisions of the Labor Court and of the Regional Court on the ground that since Chernozubova had been hired only as a temporary worker, the plant management had the right to dismiss her when production was curtailed and to retain on the staff—by agreement with trade union—those temporary workers whom it considered most competent for the work.

The procuracy agreed, and it protested the decision to the Ukrainian Supreme Court, which reversed the Labor Court and the Regional Court, and dismissed the case.

38. S. *v.* ODESSA BREAD TRUST

The educational combine of the Odessa Bread Trust[32] hired as office-cleaner Mrs. S. to substitute for the permanent cleaning woman Mrs. P. who had fallen sick. After six months, Mrs. S. brought up the question of her being permanently employed in place of the sick Mrs. P. Her application was rejected on the ground that Mrs. P. had not been dismissed and that the job was being kept open for her as a permanent worker who had been employed by the trust for many years.

About two months thereafter, Mrs. P. returned and Mrs. S. was accordingly dismissed. The latter appealed against her dismissal to the Rates and Conflicts Commission, which rejected her claim. The Labor Inspection set aside the decision of the Rates and Conflicts Commission, whereupon Mrs. S. brought suit in the Labor Court, requesting reinstatement and back pay, including compensation for unused vacation time.[33]

The Labor Court satisfied the claim, reasoning that Mrs. S. could not be considered a temporary worker, having been in the job for eight months, while Mrs. P. had stayed away from work without serious reasons and therefore had lost her right to reinstatement. This decision was upheld by the Odessa Regional Court on appeal.

At the protest of the assistant procurator of the republic in charge of labor cases, the case was taken to the Ukrainian Supreme Court which handed down the following decision:

1. The administration of the educational combine had the right to keep the job open for Mrs. P. for eight months. Paragraph *g* of Article 47 of the Labor Code gives the employer the right to dismiss a worker two months after the latter becomes unable to work, without, however, imposing on him an obligation to do so.[34]

2. Since Mrs. P. was not dismissed, and returned to work after her recovery, two persons were available for one and the same job, and the management was

consequently entitled to dismiss Mrs. S. under paragraph *a* of Article 47 of the Labor Code, since it was impossible to retain her on the job for lack of a permanent establishment.

On these grounds, the Supreme Court reversed the decision of the Labor Court in so far as it dealt with the reinstatement of Mrs. S., but left in force that part of the decision relating to compensation for unused vacation time.

39. TEMPORARY WORKERS *v.* TRANSPORT OFFICE

The Transport Office of the Odessa Bread Trust hired twenty workers, for loading and unloading, on a temporary basis. After two months it became apparent that in consequence of increased deliveries of flour the trust would have to retain for some time a number of temporary workers, in addition to the permanent personnel. The Transport Office therefore inquired at the Regional Union of Local Transportation Workers whether these temporary workers should be kept on, or whether they should be dismissed after the expiration of two months and then rehired as soon as the deliveries of flour increased.

At a meeting convened to consider this, it was agreed to retain the temporary workers for an additional period not exceeding two months on condition that they would be assigned to the permanent staff in case of a further extension. When notified of this resolution, the workers did not raise any objections.

Shortly thereafter, a group of nineteen workers brought suit against the Transport Office, claiming discharge pay under Article 88 of the Labor Code, on the ground that after two months' work they should have acquired the status of permanent workers who are entitled to discharge pay if dismissed in consequence of a personnel reduction.[35]

The Odessa Bread Trust then applied to the Chief Administration for Bread of the USSR, pointing out the following: The law on labor conditions for temporary workers sets forth for them a strictly limited period of employment so that employers may not apply to permanent workers the lesser safeguards established by that law. Furthermore, the People's Commissariat of Labor of the USSR, in its circular letter of April 16, 1927, has attempted to combat the circumventing of the law on temporary workers by employers who attempt in this way to obtain economic advantages.[36]

In those cases, however, where no evasion of the law is involved and where the extension of the period of employment takes place with the consent of the trade unions and is not actuated by petty interests of financial opportunism but rather by the need to carry out in time an important task, such as the uninterrupted delivery of flour to the bread plants so that the population may be supplied with bread, a literal application of the law appears to be inadmissible.

It was established in the present case that, prior to the expiration of the period of employment of the temporary workers, the Transport Office had asked the trade union whether they could be retained for a short period because of increased deliveries of flour to the bread plants, and the trade union had agreed to the extension of the employment of these workers for a period not exceeding two months. No objections against this agreement were voiced by the workers. Thus in the present case there was no circumvention of the law detrimental to the workers' interests, and the transport office had the right to dismiss the temporary workers after the first two months, and to rehire them when increased supplies of flour began to come in.

The Chief Administration for Bread of the USSR, being in full accord with this view, turned to the procurator of the USSR who directed the procurator of the Ukrainian Soviet Republic to protest the case to the Ukrainian Supreme Court. The latter granted the appeal and set aside the decision of the Labor Court and the ruling of the Odessa Regional Court and dismissed the suit of the workers.

40. BUILDING WORKERS' UNION *v.* ODESSA BAKERY

The Building Workers' Union sued one of the Odessa bakeries for discharge pay in behalf of a group of workers who had been hired for an indeterminate period and fired without notice. The bakery's management defended on the ground that the workers had been hired for specific jobs, that the labor contract had automatically come to an end with the completion of these jobs, and that therefore discharge pay ought not to be extracted.

The Labor Court satisfied the workers' claim for the following reasons: (1) All of them had been working for more than two months, so that they could not be considered temporary workers. (2) They could not be considered as hired for a specific task, since they were given jobs as mechanics and were given no inkling of when the jobs might end.

The Odessa Regional Court, on the bakery's appeal, reversed the Labor Court's decision and dismissed the case on the ground that the plaintiffs had been hired for a specific job and therefore had no right to discharge pay.

The Regional Committee of the Building Workers' Union applied to the procuracy with a request to protest the Odessa Regional Court's decision by way of supervision. The Ukrainian Supreme Court handed down a decision in which it stated that according to Article 34, paragraph *c*, and Article 44, paragraph *c*, of the Labor Code, a worker may be considered to be hired for completion of some particular job, and not for an indefinite period, only in a case in which the extent of his job is made precisely known to him at hiring and he has the opportunity to judge approximately how long the work will last.[37] In the present case, a note was made in the account books to the effect that the plaintiffs had been hired for capital-mechanical jobs, without the extent of the work ever having been concrete to them. This does not meet the requirements of the aforementioned clauses of Articles 34 and 44 of the Labor Code.

Therefore, the Supreme Court, declaring the Labor Court's decision to be in conformity with the law, reversed the decision of the Odessa Regional Court.

Cases on Wages

41. TEMPORARY WORKERS *v.* GRAIN SUPPLY

The Odessa Regional Office of Grain Supply for a number of years practiced an arrangement by which workers unloading grain at the port were hired and fired daily, as "temporary" workers. This systematic daily mass dismissal was designed to avoid paying the workers compensation for unused vacation time, since temporary workers had no right to such compensation. The Odessa Regional Council of Trade Unions, in the course of trade union discipline, commissioned the chief legal adviser of the Odessa Bread Trust to bring to court the question of an employer's right to resort to the systematic daily hiring and firing of the very same workers.

It must be noted that from a legal point of view the employer is in no way limited in his right of hiring and firing workers, as long as the reasons for dismissal provided for in Article 47 of the Labor Code are kept in mind.[38] Although the employer is bound by the decision of the Rates and Conflicts Commission with regard to dismissal of permanent workers (that is, workers hired for an indefinite period after two weeks' probation) there are no such limitations in the statute with regard to temporary workers and the employer is quite free from any conditions. The dispute was first examined in the Rates and Conflicts Commission, where no agreement was reached, and then was heard in Odessa Labor Court.

Since the defendant in the course of his argument himself indicated that perhaps not all were being hired and fired as temporary workers, the plaintiff requested the court to appoint an investigating committee that might ascertain the facts concerning daily hiring and firing of the same workers and exclude in advance the claim of those workers who did not show up for work for unsatisfactory reasons and those who had not been hired again, even for a single day in the work-year.

The court granted this request. The investigating committee ascertained that more than three hundred men and women, in the course of two years, had been hired and fired daily as temporary workers, without receiving any of the compensation provided for permanent workers. On the basis of the committee's conclusion, the court declared that the actions of the Odessa Regional Office of Grain Supply violated both the letter and the spirit of the Labor Code concerning temporary workers, and obliged the defendant to recognize these workers as permanent and to pay them compensation for unused vacation time for two consecutive years.

This decision was affirmed on appeal.

42. ODESSA BREAD TRUST *v.* F.

The Odessa Bread Trust brought suit in the Odessa Labor Court against F., former procurement agent of the Procurement and Sales Office, for return of an advance payment of approximately 2000 rubles which he had failed to repay. In corroboration of their claim, the trust submitted an extract from F.'s personal account. The defendant contested the suit and the court adjourned the hearing, ordering the parties to audit their mutual accounts and to present at the next hearing their precise accounting.

At the next hearing, the defendant failed to appear and the plaintiff moved that the court hear the case in his absence, as provided in Article 72 of the Code of Civil Procedure. The court sustained the motion and heard the case in substance.

The plaintiff stated that according to the wage rate for his job, as confirmed by the Chief Administration for Bread, F. was to receive a salary of 350 rubles monthly, whereas for over two years he was actually paid 425 rubles per month. It appeared that the Bread Trust had contracted with F. to pay the larger sum as an advance, in anticipation that the Chief Administration for Bread would confirm it as the proper wage rate for that job.[39]

The Labor Court held that the Bread Trust may not recover its excess payments, since every payment made to a worker on account of his salary represents his budget, and he plans his expenses according to the payments received.

Therefore, F.'s budget should not be allowed to be disrupted because of the failure of the Chief Administration for Bread to confirm the wage scale according to which he was paid, and the trust has no right to demand from a worker the return of payments which were made voluntarily, on the basis of a work contract, even though this contract may have been formally invalid.

Further, the Labor Court expressed the opinion that enterprises and institutions have in general no right to demand from workers the return of advance payments in excess of wages due at the date of the dissolution of the work contract. The correctness of this conclusion is confirmed by the expediency of life, since, on the one hand, the tightly limited budget of a worker should not be upset after the dissolution of the work contract by compelling him to return advance payments which were made voluntarily, at least in cases in which the work contract was terminated through no fault of his; and on the other hand, it would be inadmissible and senseless to fill the books of institutions and enterprises with payroll accounts which do not reflect the real values.

On appeal by the trust to the Odessa Regional Court this decision was affirmed.

At the protest of the procurator of the Republic, the case then came by way of supervision before the Ukrainian Supreme Court. According to the Supreme Court, the Labor Court failed to ascertain what amounts were paid to F. as wages for work done and what amounts were paid as advances, constituting a debt for accountable sums. The court should have verified these circumstances and ordered the plaintiff to present additional proof. Further, the statement of the Labor Court that a worker is not liable to return money paid voluntarily by the employer according to the work contract is correct only when the worker received such money as some modus of payment for work performed, but not when he received it as advances or as a personal loan on account of his salary.

Therefore, the Supreme Court reversed the decision of the Labor Court and remanded the case to the Labor Court for retrial.

43. T. *v.* ODESSA BREAD TRUST

T. was a draftsman in the production department of the Odessa Bread Trust and received a salary of a draftsman in the fifth category, though he actually did the work of a construction designer. He therefore considered that he should be classified in the category of engineers, with a considerably higher monthly salary. This question was brought twice before the Rates and Conflicts Commission: the first time the commission rejected T.'s complaint; when he applied again some six months later, the commission reached no agreement.

The case was then taken to the Labor Court, which satisfied the claim, on the basis of Article 62 of the Labor Code. This article provides that one who is doing work of various qualifications shall be paid at the rate of the highest of those qualifications.[40]

The trust then called the matter to the attention of the assistant procurator for labor cases, pointing out that the effect of the Labor Court's decision was to compel the transfer of T. from the production section to the engineering section, though questions of that nature should be resolved exclusively in arbitration procedure and not by the courts. Otherwise an undesirable precedent for wage policy would be set, and it would be possible to circumvent the law and to abolish the procedure of classifying workers in wage categories and of applying a given wage scale. The procurator therefore protested to the Odessa Re-

gional Court, suggesting that the decision of the Labor Court be set aside, the case discontinued, and the parties directed to bring the matter before an arbitration court. The Odessa Regional Court upheld the procurator's protest, reversing the decision of the Labor Court.

The Central Committee of the Bakers' Union then petitioned the Ukrainian Supreme Court for review, on the ground that the case was in the nature of a litigation and could not be resolved in arbitration procedure by way of reconciliation.

The Supreme Court then handed down a decision of basic significance. It held that questions concerning the setting up or modifying of labor conditions in enterprises are matters for the organs of arbitration, and not for the courts. The confirmation or modification of the classification of work by wage-rate categories belongs to the exclusive competence of the Rates and Conflicts Commission. The court rejected as entirely erroneous the argument of the union that the present case did not involve a change in the conditions of work or a reclassification of work but only the fact that T. was doing work of a higher classification and accordingly should be paid a higher rate.

It appears from the files of the case, the court said, that T. had appealed at one time to the Rates and Conflicts Commission against his work classification, which was then declared to be correct. Consequently, the object of the dispute was the classification of work according to a wage category, regardless of the fact by whom the work was being carried out, and it was by no means concerned with the fact that he was doing work other than that provided for in the contract. From the plaintiff's petition and from the opinion of the workers' representative on the Rates and Conflicts Commission it further appears, the court went on to say, that the plaintiff requested reclassification and a higher salary on the grounds that he was a graduate of the Higher Technical Institute. However, an automatic advancement on this ground is not provided by law, and therefore cannot be awarded by the court.

The Supreme Court therefore affirmed the decision of the Odessa Regional Court and denied the appeal of the Central Committee of the Bakers' Union.

44. WORKERS *v.* ODESSA BREAD TRUST

In the summer of 1938, the Procurement and Sales Office of the Odessa Bread Trust was reorganized and divided into two independent offices, each with its own balance sheet: the Procurement Office and the Sales Office. Simultaneously the management of the trust cut the wages of a great number of employees of both offices. Complaints were made before the Rates and Conflicts Commission, which was unable, however, to come to any agreement, and so the pay reduction was put into effect by the management.

The Odessa Regional Committee of the Bakers' Union thereupon applied to the Odessa Labor Court, outlining the facts of the case and requesting that the salary reductions be declared unlawful and that the employees concerned be paid at the former rates, on the ground that those rates had been fixed by the Chief Administration for Bread of the USSR.

The trust defended on the ground that the rates which were in effect prior to the reorganization of the office did not correspond to the nature of the work to be done by the plaintiffs after the reorganization, and that the change of the nature of the work after the reorganization called for a readjustment of the salary rates.

The Labor Court found the claim to be justified, stating that the rates had been reduced in violation of the collective contract, since it had been done without the sanction of the Rates and Conflicts Commission.[41] The trust's allegation that the reduction was effected by agreement with the union is immaterial, the Labor Court held, since the union cannot replace the Rates and Conflicts Commission, and since, in addition, the union only consented to a reduction of personnel and not to a lowering of wages. On the basis of these considerations the Labor Court gave judgment for the plaintiffs, awarding them the difference between the former and the present wage rates. This decision was affirmed by the Regional Court on appeal.

At the protest of the procurator of the republic for labor cases, the Ukrainian Supreme Court rendered the following decision:

1. The fact of the reorganization of the apparatus of the Odessa Bread Trust has not been denied or contested by the plaintiffs.

2. In connection with the said reorganization, which was to meet the need for a more efficient service to the consumer, the previous wage rates as sanctioned by the Chief Administration for Bread did not stand in the way of a reduction of the staff and the abolition of some positions. These measures were the unavoidable results of the reorganization, and the union organs did not object to them.

3. After the jobs for which the plaintiffs were paid were abolished, the management were entitled to dismiss them; consequently, their assignment to other less remunerative jobs was in this case only to the advantage of the plaintiffs.

4. On being transferred to other jobs, the plaintiffs were classified into the wage categories attaching to their new positions, and for two weeks their former salaries were paid out to them, as required by Article 64 of the Labor Code.[42]

5. Article 36 of the Labor Code gives the plaintiffs the right to turn down the new jobs and to claim discharge pay.[43] The plaintiffs, however, failed to do so—a fact which leads to the conclusion that they consented to work under the new salary conditions.

Therefore the Supreme Court set aside the decision of the Labor Court and dismissed the case.

45. UNSKILLED WORKERS *v.* WORKERS' HOUSING COÖPERATIVE

Five unskilled workers entered into an agreement with the Odessa Workers' Housing Construction Coöperative "Pishchevik" to unload three freight cars for three hundred rubles. Within twenty-four hours after this job was finished, they received payment in full, according to their contract, but they brought a claim to the Labor Court for payment of 150 rubles each in wages and 250 rubles for overtime, pointing out that the Transport Association pays its loaders 150 rubles for unloading each freight car, and that such unloading is considered hazardous work for which a six-hour working day is provided, whereas they worked twenty-four hours without a stop.

The Labor Court awarded additional wages to the plaintiffs, but refused their claim for overtime. On appeal by the defendants, the Regional Court set aside this decision and remanded the case for retrial, recommending that the Labor Court call upon the president of the local transport workers' union and the chairman of the Transport Association to testify as experts.

On the second trial the plaintiffs' claim was granted in full. On appeal, the Regional Court set aside the decision and dismissed the case on the ground that plaintiffs had no legal claim. However, the presiding member of the Regional Court wrote a dissenting opinion in which he agreed with the Labor Court's decision. The regional procurator then protested to the Plenum of the Regional Court, recommending that the part of the Labor Court's decision awarding an additional wage be left in force.

In the Plenum of the Regional Court opinions were equally divided, so that the case was sent for final resolution to the Ukrainian Supreme Court, which handed down the following decision:

The decision of the Regional Court dismissing the case is quite correct, and neither the presiding member's special opinion nor the procurator's protest is valid, since these defend a non-conscious segment of the workers, who are of an exploiting frame of mind. The plaintiffs themselves made it clear at the trial that until the time in question they received daily, in all their jobs, 10 rubles a day. In the case in point, they received 60 rubles per worker, according to a contract for a job they themselves had declared would take less than twenty-four hours. The plaintiffs' original statement that they had worked without a break from the morning of one day to the morning of the next is not supported by the record, and they themselves later admitted that there had been three pauses in the work. The Transport Association's information to the effect that it paid 150 rubles per freight car for unloading cargo is no basis for assigning to the plaintiffs a wage of the same amount, since the plaintiffs did only a part of the work which is described in the Transport Association's information (they only unloaded the freight cars, without loading the cargoes onto trucks and then unloading the trucks). Consequently, payment of 100 rubles for this part of the work instead of 150 rubles is quite natural, not to mention the fact that the Transport Association's rates are not obligatory for other institutions and enterprises. Therefore, the court had no grounds whatsoever to decide in favor of overtime pay. There were only two alternatives. The court could have set the plaintiffs' pay rate for work by the day, with the designation of a norm for earnings, and then it might have been possible to talk about overtime pay. But as has already been pointed out, the plaintiffs themselves made it clear that they had received 10 rubles a day as a daily rate on all their jobs, and consequently the 60 rubles which they received from the defendant for twenty-four hours amply covers the pay for a normal six-hour day's work and overtime as well. If, on the other hand, piece-payment had been stipulated, then there is nothing to be said about any kind of overtime pay; the nonobservance of labor legislation might involve criminal responsibility but cannot in such circumstances serve as grounds to pay workers—unskilled labor, at that—at the rate of even 60 rubles per twenty-four hours. As for the trade union representative, who considered these exploitative demands against the workers' housing coöperative to be correct, as well as for the court which granted these demands, they committed the grossest error, and failed to comprehend that the granting of such demands is injurious to the interests of the national economy.

46. WORKERS *v.* ODESSA AND NIKOLAEVSK TRUSTS

In 1937, the Odessa Trust of the Chief Administration for Bread was broken down into two independent units—the Odessa and the Nikolaevsk trusts. As a result of this reorganization, the administrative apparatus of the Odessa Trust

was curtailed. This gave rise to a dispute concerning the amount of discharge pay received by those dismissed. The labor union reckoned that those dismissed ought to be given extra discharge pay because their dismissal had been the result of rationalizing the trust's organization. The management, on the other hand, considered it an ordinary staff reduction resulting from dividing the trust into two units. No agreement was reached, and the union took the case to the Labor Court.

The Labor Court refused the plaintiff's claim, reasoning that the division of the trust could not be considered a rationalization of organization, that the amount of work had been curtailed and a superfluity of employees thereby created, that the character of the work itself had not changed, and that consequently dismissal without extra compensation was justified under Article 47, paragraph *a* of the Labor Code.[44]

This decision was appealed. The appellants pointed out that the court had not considered the divided trust as an improvement in the administrative structure. Along with improving and simplifying the trust's structure, the form of bookkeeping had been simplified. The court, it was argued, had violated the practice of the People's Commissariat of Labor in cases concerning payment of additional discharge pay to employees of state institutions and enterprises dismissed as a result of rationalization of the apparatus.

The Regional Court handed down the following decision:

1. Curtailment of staff as a result of simplifying the structure of the apparatus can be considered curtailment "for rationalization" only in instances in which the productive capacities which the enterprise possessed before simplification have not been lessened.

2. In the disputed case, should "rationalization" be acknowledged, the length of time put in by the workers *after* the actual rationalization and before their ultimate dismissal is significant with regard to rights to additional discharge pay.

3. In a case in which those dismissed have continued to work for more than two months after the actual rationalization of the apparatus, the right to additional discharge pay expires, since in such a case dismissal must be considered simply as subsequent to and not as a result of rationalization of the apparatus.

4. The day the Odessa and Nikolaevsk trusts began to participate in the economic process as independent juridical persons must be considered to be the day of actual rationalization.

On the basis of the above arguments, the Regional Court reversed the Labor Court's decision and remanded the case for retrial in the same court with different membership.

Cases on Social Insurance

47. ODESSA SOCIAL INSURANCE AGENCY *v.* ODESSA BREAD PLANT

A baker of one of the Odessa bread plants had an accident at work, as a result of which his left arm had to be amputated up to the elbow. From the time of the accident to the time when his permanent disability was officially established, he received from the social insurance agency a pension and medical expenses.[45]

The insurance agency claimed reimbursement from the bread plant for all expenses and pension payments, both before and after the permanent disability

was officially established, on the ground that the bread plant had failed to provide a safe place of work and hence was liable under Article 413, Part 2, of the Civil Code which provides: "The Social Insurance Agency, upon granting an allowance to an injured person, has the right to demand from the employer reimbursement of this allowance if the injury was caused by a criminal act or omission of the employer."

The bread plant acknowledged its liability under Article 413, Part 2, but denied that this extended to payments made prior to the official acknowledgment of a permanent disability, arguing that until such acknowledgment the disability must be considered as temporary, and that under Article 179 of the Labor Code the insurance agency in paying an allowance for temporary disability "fulfills its own independent obligation created by law."[46]

The dispute came before the Odessa Labor Court, which gave judgment for the insurance agency for reimbursement of pension payments made after the permanent disability was officially established, but not for those made before. The court stated that the right to reimbursement arises at the moment that the extent of the injury has been officially determined and the pension has been assigned—that is, at the moment when the injured person has been discharged from the hospital without having recovered his former earning capacity. It is then that his claim for damages arises against the person responsible. Prior to that time, the injured person is entitled to full allowance from the insurance agency, even though subsequently he may recover a part or all of his earning capacity; this full allowance is not in the nature of compensation for loss of earning capacity, but is an independent obligation of the insurance agency. This is not a case of suit by the insurance agency for payment of all losses incurred by it in consequence of the baker's accident; such payment is not provided for by law, since Article 413, Part 2, of the Civil Code only gives a right of reimbursement; that is, a right equal to that which the injured person would have against the person who caused the damage. But the injured person only has a right against the employer based upon his loss of earning capacity; the employer is not obliged to pay a full allowance, as for a total disability, such as the insurance agency is obliged to pay, pending the determination of the extent of the injured person's permanent disability.

This decision of the Labor Court was reviewed by the Regional Court, on appeal by the insurance agency. It was argued by the appellant that Article 413, Part 2, of the Civil Code makes no distinction between allowances for temporary and permanent disabilities, and that the right of reimbursement arises not from the time the disability is officially established but from the time it actually occurs, that is, from the time of the accident. It was also argued that the lower court misinterpreted Article 179 of the Labor Code and that the effect of this erroneous interpretation was to treat the baker's injury as the result of a criminal act or omission of the organs of social insurance.

The Regional Court agreed with the reasoning of the appellant. It stated that Article 179 of the Labor Code refers to the general law on social insurance and sets forth the extent of the maintenance allowance regardless of the cause of the disability. Article 179 has nothing to do with the right of the insurance agency to reimbursement from the person who caused the disability. Under Article 413 of the Civil Code the right of reimbursement extends to every disability, whether temporary or permanent, which was caused by an unlawful act or omission on the part of the employer. The Regional Court therefore set

aside the decision of the Labor Court and remanded the case for retrial.

The Chief Administration for Bread of the USSR, in answer to a communication from the chief legal adviser of the Odessa Bread Trust, stated that the Chairman of the Ukrainian Supreme Court was in full agreement with the Odessa Regional Court in this matter and that he had rejected the application of the Chief Administration for Bread for a reopening of the case by way of supervision.

48. WATCHMAN *v.* BREAD PLANT
INSURANCE AGENCY *v.* BREAD PLANT

While chasing burglars who had broken into the factory, the watchman of the fire brigade of one of the Odessa bread plants fell from a stack of wood and injured his leg. The insurance agency awarded him a general sickness pension, based on his loss of earning capacity. The watchman believed that he was not fully compensated for the damages he had sustained and brought suit in the Odessa Labor Court against the bread plant for an additional compensation. He alleged that his injuries were caused by the negligence of the plant management in permitting lumber to be scattered around the yard.

The Labor Court found that the watchman had acted without negligence; he had done his duty, caught a burglar, and taken him to the police station. The management, however, should have seen to it that the lumber at the sawmill was piled up properly, and its failure to do so, the court held, was the cause of the plaintiff's injuries. Therefore, on the basis of Article 403 of the Civil Code, which imposes liability for causing another harm, the Labor Court ordered the bread plant to pay the watchman a monthly allowance of the difference between his pension and his average wages at the time of the fall.[47] This decision was affirmed by the Odessa Regional Court on appeal.

When the insurance agency learned of the decision and of the fact that the watchman had lost his earning capacity not as a result of ordinary sickness but because of an injury, it reviewed the matter of his pension and increased it to the amount due to cripples and disabled persons. It then sued the bread plant for reimbursement of the total allowances it had made to the watchman.

In this second suit the Labor Court gave judgment against the bread plant, but only to the extent of the payments which the insurance agency had originally awarded on the basis of the general sickness rate. It was the court's view that the first suit, that by the watchman against the bread plant, had already determined the extent of the insurance agency's liability, and that that determination was binding upon the court in the second suit. The second decision of the Labor Court became final and the insurance agency did not appeal.

At the request of the superior administrations both of the insurance agency and of the bread plant—that is, the Central Committee of the Bakers' Union and the Chief Administration for Bread, respectively—the Ukrainian Supreme Court reviewed the two cases by way of supervision.[48]

The Supreme Court held that the fact that the watchman fell over logs that were lying around was in itself not a sufficient ground for imposing on the bread plant liability under Article 403 of the Civil Code. As the lawyer for the bread plant pointed out, the circumstances under which the lumber was delivered and used made it impossible to pile it up immediately. Lumber was transported continually from the railroad station to the bread plant and from the bread plant

to the sawmill, so that at the end of the work day there were always uncompleted stacks left as well as unloaded lumber not yet stacked.

Further, except in cases of injuries caused by criminal acts or omissions of the employer, workmen's compensation is imposed exclusively on the social insurance agencies. When in this case the insurance agency awarded the watchman a pension for general illness instead of a disability pension, the watchman should have appealed to the higher insurance organs;[49] and the court, in rendering its decision, obviously should have called the attention of the insurance agency to the incorrect rate of the pension, and should not have imposed additional payments on the bread plant.

On reconsideration of the pension, the insurance agency adjusted the pension correctly, on the basis of the disability rate. However, this fact does not entitle the insurance agency to reimbursement from the enterprise which had previously paid what were in fact insurance contributions.[50]

At the same time, the Supreme Court held, the watchman should not be obliged to return the supplementary payments which he had received without ground from the bread plant.[51] Further, the procedural objection of the Central Committee of the Bakers' Union, to the effect that the amount of insurance as determined by the insurance organs cannot be contested in a court litigation, was held to be of no significance for the present case.[52]

The Supreme Court therefore set aside both decisions—the one in the suit of the watchman against the bread plant, the other in the suit of the insurance agency against the bread plant—and discontinued the proceedings.

49. CARPENTER *v.* BREAD TRUST

In 1937 the sawmill at one of the Odessa bread plants hired as a carpenter a man who had previously worked as a factory janitor. After three days he was injured at the joiner's bench and the fingers of his left hand were cut off.

On the basis of the wages which the man had received in his previous job as a factory janitor, the insurance agency granted him the pension of a disabled person of the second category.[53] The carpenter, however, being of the opinion that prior to his accident he had the possibility of earning 350 rubles per month and that the accident had occurred through a fault of the management of the sawmill, brought suit against the bread trust for the difference between the average wages of a carpenter which he would have been paid by the sawmill and the pension which the insurance agency had granted to him.

The Odessa Labor Court denied the claim on the ground that plaintiff had started working as a carpenter only three days prior to the accident, that he had no agreement with the management of the sawmill either about wages or about the kind of work he was supposed to do, and further that prior to taking up his carpenter's job at the sawmill he was employed as a factory janitor with a monthly pay of less than 100 rubles, so that the pension assigned to him by the insurance agency fully covered the damage sustained from the injury.

On appeal by the carpenter, the Odessa Regional Court disagreed with the reasoning of the Labor Court. Every worker who suffers injury in connection with his work, it held, is entitled under Article 413 of the Civil Code to full compensation for the damage—provided, of course, that the conditions and reasons are as set forth in Article 413—irrespective of how long he was on his job and how his wages were computed.[54] The right to compensation comes into existence as soon as the employee is authorized by the employer to do cer-

tain work, and it is based on the fact of his having suffered an injury or other damage while doing this work.

As to the question what wages are to serve as the point of departure in determining damages, the Regional Court stated that the employer must bear full responsibility for all adverse consequences arising from the failure to conclude a work contract or to stipulate in the prescribed legal form the nature of the work, the labor conditions, and the pay for the job. The plaintiff's salary has to be fixed, under these circumstances, according to the wage rates for workers who, at the time of the injury, were doing the same kind of work as the plaintiff. It is by these rates, the court held, that the supplementary compensation for the damage must be determined. To base the compensation on the wages the plaintiff had been paid in his former job as a janitor was erroneous, because of the possibility that his former job was not proportionate to his profession or qualifications. He should not be deprived of his right to claim compensation on the basis of the wage rates applicable to the kind of work he was actually doing with the consent of his employer.

Therefore, the Regional Court reversed the decision of the Labor Court and remanded it to the Labor Court for retrial.

When this decision was reported to the chief legal adviser of the Odessa Bread Trust, he informed the management that the opinion of the Regional Court was correct. He was then authorized by the director of the trust to acknowledge the claim on the grounds set forth in the decision of the Regional Court.

50. INSURANCE AGENCY *v.* BREAD PLANT

A foreman of one of the Odessa bread plants was assigned an award because of an injury suffered while at work. Upon recovery he continued to work in the plant as foreman at the same salary as before.

The insurance agency brought suit against the bread plant for reimbursement of the award paid to the foreman on the ground that the injury which he suffered was due to the unlawful acts of the plant management. The bread plant did not contest the claim, but asked to be allowed to deduct the salary paid to the foreman from the amount to be awarded to the insurance agency.

The Odessa Labor Court refused to allow such a deduction on the ground that the foreman was not a party to the dispute and that no judgment could be given against a third person.

On appeal to the Odessa Regional Court counsel for the bread plant argued that the lower court had failed to take into consideration a ruling of the Plenum of the Supreme Court of June 28, 1926, which authorized deductions such as the one sought in this case.[55] However, the Regional Court interpreted that ruling to apply only in cases in which a disabled person is awarded damages against an employer by court order, and then receives a pension from the insurance agency on the ground of general disability; in such cases the damages paid by the employer may be set off against any claim by the insurance agency for reimbursement, since such a pension is in the nature of compensation to supplement loss of earning capacity. In the present case, according to the court, the foreman received an award for an injury suffered in connection with his work and not a pension for general disability.

The court added: The appellant relies on a decision of the Supreme Court;

but that has effect only upon those questions on which it passed, as the chief legal adviser of the appellant must realize.[56] The court has not violated the ruling of the Supreme Court, because the Supreme Court considered in that ruling both the question of the insurance award and the question of supplementary compensation, and clearly and distinctly declared it permissible to deduct [only] the latter.

51. CASHIER K. *v.* NIKOLAEVSK BREAD PLANT

While on a duty trip in the winter of 1940, K., the cashier of the Nikolaevsk Bread Plant of the Odessa Bread Trust, froze his fingers, so that his left hand had to be amputated. He was subsequently classified under the third disability category.

K. then sued the Bread Plant for a monthly disability allowance amounting to the difference between the disability pension granted to him and his average wages prior to the accident. He based his claim on the Bread Plant's failure to provide him with gloves, relying on Article 141 of the Labor Code which obliges enterprises to provide special clothing and protective equipment for dangerous jobs.[57]

The Labor Court denied K.'s claim on the ground that his trip was taken under the normal conditions of life prevailing in the country, and that it did not endanger his life or health; and that even if K. had been entitled to be issued gloves, he would still have no claim since his accident did not occur as a result of the normal circumstances of his trip but rather as a result of his own gross negligence in getting completely drunk while en route.

This decision was affirmed on appeal.

52. CH. *v.* ODESSA BREAD TRUST
INSURANCE AGENCY *v.* ODESSA BREAD TRUST

Miss Ch. was seriously injured while working at a bakery of the Odessa Bread Trust. Dissatisfied with the insurance pension assigned to her, she brought suit against the bakery for the difference between her pension and the salary she had earned up to the time of her accident. At the same time the insurance agency brought suit against the bakery for reimbursement for the sum it had awarded to Miss Ch.

Upon investigation by the Labor Inspection,[58] it appeared that Miss Ch. had been working at the bakery for only three days, that she had been warned by the foreman not to do anything which was not properly her job, and that nevertheless she had tried to straighten out some molds of dough that passed on a conveyor to the oven—something not properly her job—and had so been injured. Moreover, warnings had been posted along the conveyor and on the kneading machine next to it. On the other hand, the Labor Inspection inquiry also determined that the plant must bear responsibility for the accident because it did not provide a specialist for control of technical safety, whose functions would have included that of thoroughly acquainting workers with the dangers of the machines they operated.

The Labor Court satisfied the claims both of Miss Ch. and of the insurance agency, on the basis of Article 413 of the Civil Code, which makes an enterprise

liable for workmen's compensation for injuries caused by criminal acts or omissions of the management.

The case went up to the Ukrainian Supreme Court, which reversed the decision of the Labor Court, on the ground that the Bread Trust had taken sufficient precautionary measures. Article 413 of the Civil Code cannot be cited extensively, the court held, and the bakery's administration made responsible simply for the fact that rules for technical safety had not been sufficiently propagandized among the workers, when in fact these rules had been posted on the machines themselves.

53. ODESSA BAKERY *v.* S.

By a decision of the Odessa Labor Court Miss S., a waitress of an Odessa bakery, was awarded an allowance from the bakery for injuries incurred. The allowance consisted of the difference between the pension she received from the insurance agency and her average wage at the time of the accident. The award called for immediate execution. The management of the bakery paid Miss S. the sum due her according to the court order, but appealed the decision. The appellate court reversed the decision of the Labor Court on the ground that the injuries were not caused by any negligence on the part of the bakery management.

The bakery then brought suit against Miss S. for returns of the money it had paid her. The Labor Court satisfied this claim, but granted Miss S. a considerable time to pay.

On Miss S.'s application the President of the Ukrainian Supreme Court took the case, by way of supervision, to that court, which issued a decision of basic significance.[59] As it has often declared, the Supreme Court wrote, a payment awarded to a worker may not be recovered even if the basis for payment is later shown to be erroneous or if the payment is made because of conscious deception on the part of the worker. This rule applies also to cases of allowances for injury, as in the present case. Even though the decision of the court called for immediate execution of the award and even though decision was subsequently reversed, it does not follow that the sum already paid to the worker must be returned.

Therefore, the Supreme Court dismissed the case against Miss S.

Notes

30. MANAGER S.

1. Article 127 of the Soviet Constitution provides: "No person may be placed under arrest except by decision of a court or with the sanction of a procurator." This offers little protection against arbitrary arrest, since the procurator is closely associated with the prosecution. In the present case the arrest of S. was performed by the procuracy of the NKVD. On the procuracy generally, see above, Case 1, note 4.

Upon arrest (or upon being taken into provisional custody without arrest, which is the procedure usually followed), the suspect is supposed to be turned over immediately to an investigating magistrate, who interrogates the suspect, calls other witnesses, and takes evidence. The suspect may or may not be kept in custody throughout this preliminary investigation. There is provision for release on bail, but bail is seldom required. If the investigating magistrate finds that there is sufficient evidence, he prepares an indictment. The indictment is presented by the procuracy, and the case then goes to trial on the indictment. See Berman, *Justice in Russia,* pp. 210–215.

2. Article 47 of the Ukrainian and RSFSR Labor Codes (which are identical) states the conditions under which a work contract may be dissolved unilaterally by the employer. Under paragraph *e* of Article 47 this may be done "if the employee is kept in custody for more than two months." The entire article is translated in note 20 below.

3. The Special Board of the Ministry (formerly People's Commissariat) of Internal Affairs is empowered by law to exile, banish, or intern in corrective labor camps for a period up to five years persons found to be "socially dangerous." The trial is administrative and secret. Defense counsel are in fact not allowed and there is no right of appeal. See Berman, *Justice in Russia,* pp. 84, 164–165, 296.

4. Cf. the case of Mrs. Imertsaki, Case 3.

5. Prior to 1938, a special session of the People's Court heard labor cases. The judiciary act of 1938 abolished this special labor court. Mr. Konstantinovsky states that this had very harmful results, since the judges of the labor court had acquired considerable experience in labor cases and were therefore more competent to handle them than the ordinary judges.

6. The law of May 21, 1925, is an instruction (literally, "explanation") of the People's Commissariat of Labor of the RSFSR, elucidating Article 47 of the Labor Code. Paragraph 5 of this instruction contains the provision here cited. See Kiselev and Malkin, eds., *Sbornik vazhneishchikh postanovlenii po trudu* (Collection of Important Laws on Labor) (1938), pp. 99–100.

7. Paragraph 3 of the instruction cited in note 6.

31. SKOTORENKO

8. See note 1 above.

9. Article 47, paragraph *e,* of the Labor Code (see below, note 20) states that the employer "may" dissolve the work contract if the employee is kept in custody for more than two months. The present case indicates that the employer "may" exercise his discretion on the basis of the procurator's recommendation.

10. See preceding case.

32. INSPECTOR S.

11. This seems to have been a sinecure involving checking up on the way in which the trust was administered.

12. Article 49 states: "Any work contract may also be dissolved at the request of the trade union. If the employer does not consent to the request of the union, it [the request] may be appealed in the grievance procedure."

The Soviet grievance committee, called the Rates and Conflicts Commission (RKK), is composed of an equal number of representatives of labor and of management. If the members of the RKK fail to agree—which happens often—the dispute may be taken to the courts. If the RKK does reach a decision, an appeal to the courts is permitted only if the decision of the RKK has been disapproved by the labor inspector, a central union official, who is charged with the investigation of trouble situations. See Berman, *Justice in Russia,* pp. 263–264. At the time the Labor Code was promulgated the grievance procedure referred to in Article 49 was within the competence not of the RKK but of arbitration and reconciliation boards specially appointed.

13. On the Komsomols, see note 13 to Chapter I.

14. The union local is part of a dual hierarchy. It sends delegates to the district committee of the particular industry to which it belongs, which in turn is represented on the regional committee (in this case, the Regional Committee of the Bakers' Union); at the same time these committees are organized on a territorial basis by district, regional, and republican councils. The regional committee of a particular union and the republican trades council both send delegates to the All-Union Central Council of Trade Unions. See Berman, *Justice in Russia,* pp. 252–253, where, however, the words "committee" and "council" are misplaced.

Of interest in the present case is the indication that the Regional Trades Council may reverse decisions of the Regional Committee of a particular union.

15. See Case 30, "Manager S. v. Odessa Bakery," and esp. note 6.

16. The Law of the People's Commissariat of Labor of the USSR and the All-Union Central Council of Trade Unions, May 13, 1929, "on discharge at the request of a trade union," reprinted in Kiselev and Malkin, eds., *Sbornik vazhneishchikh postanovlenii po*

trudu, p. 103, provides for an appeal within seven days by the worker to the superior trade union organization, and requires a final decision, in case of such appeal, within seven days from the time the appeal is brought. The law also provides that the worker may be discharged only after the time for appeal has expired, or if the appeal is taken, only after the final decision has been rendered.

33. LISSAK

17. Typewritten or handwritten wall newspapers are commonly found in factories and shops, on collective farms, in schools, Red Army units, offices, and housing developments. They are concerned with the immediate problems of the work or living unit, meting out criticism and praise to particular individuals, making suggestions for improvement, and giving local notices of all kinds. See Inkeles, *Public Opinion in Soviet Russia* (1950), pp. 155–156.

18. Article 37 of the Labor Code states: "The transfer of an employee from one enterprise to another, or from one locality to another, even if together with the enterprise or institution, may be accomplished only with the consent of the worker or clerk; in the absence of such [consent] the work contract may be dissolved by either party, and in either case the employee is entitled to discharge pay according to Article 89." The Russian word here translated as "clerk" is usually translated "employee"; literally it means servant (*sluzhashchii*) but is used generally to signify office workers as distinguished from manual workers. The Labor Code uses the obsolete terms employer and employee, having reference to the private enterprise of the NEP period when the code was enacted.

For Article 89, see below, note 29.

Article 37 was supplemented in 1932 by Article 37^1, which permits temporary transfer of workers to other jobs or enterprises in the same locality, when required by business necessity; certain safeguards are provided.

Article 36 states: "The employer may not require the employee to do work which is not related to the kind of activity for which the latter was hired, or work that is connected with an obvious danger to life or is not in conformity with labor laws.

"If in the enterprise there is temporarily no work available of the kind for which the employee was hired, the employer shall have the right to transfer him to other work corresponding to his qualifications. In case the employee refuses to do such work, the employer shall have the right to discharge him with payment of discharge pay, in accordance with Article 89.

"In exceptional cases, when it is necessary in order to avert an imminent danger, the employee may be assigned work of another type, even though it does not correspond to his qualification.

"In the above mentioned instances his wages may not be diminished, and if the temporary work is better paid than the work allotted to the employee, remuneration shall be at the higher rate."

19. This procedure is explained above, Chapter I, notes 8 and 9.

20. Article 47 of the Labor Code states: "A work contract concluded for an indefinite term, and also a contract for a term prior to its expiration, may be dissolved at the employer's request, except as provided by Articles 36 and 37, in the following instances only:

"(*a*) if the enterprise, institution, or business is completely or partly liquidated, and also in case of reduction of work;

"(*b*) in consequence of work stoppage for a period exceeding one month for reasons of production;

"(*c*) if the employee is discovered to be unfit to do the work;

"(*d*) in case of systematic non-fulfillment on the part of the employee, without valid reasons, of obligations which are imposed on him by the contract or by the rules of internal order;

"(*e*) if the employee committed a criminally punishable act directly connected with his work and established by the final verdict of a court, and also if the employee is kept in custody for more than two months;

"(*f*) [repealed]

"(*g*) if the worker is absent from work, as a result of the temporary loss of the ability to work as a result of pregnancy and childbirth, for two months beyond the four months' period set in Article 92;

"(*h*) if an employee holds a job to which a court or the Rates and Conflicts Commission has reinstated a worker who previously held that job.

"Note 1: A contract can be dissolved on the basis of paragraph *c* by decision of the Rates and Conflicts Commission. A contract can be dissolved on the basis of paragraph *d:*

"(*a*) in government institutions and enterprises, and also in coöperative and other public organizations, by independent order of the employers, with the reservation, however, that the discharged worker has the right to appeal his discharge to the Rates and Conflicts Commission;

"(*b*) in other enterprises and institutions solely by decision of the Rates and Conflicts Commission.

"Note 2: In the event of the dissolution of a contract with a worker who is a member of the shop committee or of another analogous organ, the rule stated in Article 160 of this code shall be applicable.

"Note 3: If the contract has been dissolved by the employer on the basis of paragraphs *a, b,* or *c,* the employer shall be obliged to give the employee two weeks' notice of his discharge; compensation shall be paid in such cases on the basis of the general rules (Article 88).

"Note 4: The dissolution of a contract with a person who has the right to hire and fire in enterprises and institutions of all kinds (including private ones), and also with other responsible workers of state institutions and enterprises, coöperative and other public organizations, may not be appealed in court or arbitration proceedings, but shall be decided solely by superior organs in the departmental or administrative hierarchy. The People's Commissariat of Labor, in agreement with the All-Union Central Council of Trade Unions, shall compile a list of categories of responsible workers in state institutions and enterprises of All-Union importance, and the People's Commissariat of Labor of the RSFSR in all other institutions, enterprises and organizations."

Pursuant to the law of 23 June 1933, Collection of Laws of the USSR, 1933, No. 40, Article 238, and of the law of 10 September 1933, Collection of Laws of the USSR, 1933, No. 57, Article 333, the People's Commissariat of Labor and its organs were liquidated. Instructions, rules and explanations concerning the application of the existing labor legislation are issued at present by the Central All-Union Council of Trade Unions subject to the confirmation or preliminary sanction of the Council of Ministers of the USSR, Law of 21 August 1935—Collection of Laws 1934, No. 43, Article 342.

Article 36 is translated above, note 18.

Article 37 is translated above, note 18.

Article 88 is translated below, note 29.

Article 160 provides that discharge of a member of the shop committee requires the consent of the union.

The Rates and Conflicts Commission is discussed above, note 12, under the case of Inspector S.

34. STOREKEEPER

21. For a description of such unlawful operations, see above, pp. 17 ff.

22. Article 37 is translated above, note 18.

35. LEGAL ADVISER K.

23. On producers' coöperatives, see Chapter II, note 12.

24. On the Rates and Conflicts Commission, see above, Case 32, note 12.

25. Cf. Article 47, paragraph *c* and *Note 1,* translated above, note 20.

26. Article 47, *Note 4,* translated above, note 20. There seems to be a conflict between the holding of this case, that the legal adviser is a "responsible worker," and the statements by Mr. Konstantinovsky in the Introduction to this chapter regarding the legal adviser as an "engineering-technical worker." In fact, the boundaries between these two groups are imprecise.

36. FOREMAN S.

27. See above, note 20.

28. In order to receive a pension for disability not arising from employment, a Soviet worker must have been employed prior to the injury for a period from three to twenty

years, depending on his age; or if the worker is a woman, from two to fifteen years depending on her age. See John N. Hazard, "Personal Injury and Soviet Socialism," *Harvard Law Review,* LXV (1952), 545, 558. The various categories are described below, note 53.

29. Article 88 of the Labor Code provides: "If a work contract concluded for a fixed or indefinite term is dissolved for reasons provided for in paragraphs *a, b,* and *c* of Article 47, the employer shall be obliged to pay the employee discharge pay in the amount of two weeks' wages or serve him two weeks' notice of the forthcoming discharge."

Article 89 provides for two weeks' discharge pay in case of dissolution of the work contract for reason provided for in Articles 36 (see above, note 18), 37 (see note 18), 47, paragraph *h* (see note 20), 48 (covering dissolution of the contract by the employee because of breach of contract or of labor regulations by the employer) and 80 (call-up of the worker into the armed forces).

30. Literally, "a decision of principle." Soviet writers so describe decisions to which American lawyers might refer as "making new law."

31. See paragraph *g* and *Note 1* of Article 47, translated above, note 20. The court seems to have put those two provisions together and also to have added a duty on the part of the employer to offer the disabled worker a job suitable for one in his condition.

38. S. *v.* TRUST

32. See above, Chapter I, note 10.

33. Article 91 of the Labor Code provides that a worker who does not receive his annual two weeks' vacation, or other supplementary vacations to which he may be entitled, shall have the right to money compensation therefor at the rate of his average wage at the time of compensation.

34. See above, note 20.

39. TEMPORARY WORKERS *v.* TRANSPORT OFFICE

35. See paragraph *a* and *Note 3* of Article 47, translated in note 20, and Article 88, translated in note 29.

36. The circular letter may be found in Kiselev and Malkin, *Sbornik,* p. 390.

40. BUILDING WORKERS' UNION

37. Article 34 provides: "Labor contracts shall be concluded: (*a*) for a definite period not exceeding one year; (*b*) for an indefinite period; (*c*) for the time required to fulfill some [particular] work."

Article 44 provides: "A labor contract shall be discontinued: (*a*) by agreement of the parties; (*b*) by expiration of the term; (*c*) by completion of the stipulated work; (*d*) by application of a party in the manner provided by Articles 46 and 47. The transfer of an institution, enterprise, or business from one department or authority to another shall not cut off the effects of the labor contract."

Article 46 provides: "When a contract is concluded for an indefinite period, the employee may demand its dissolution at any time, but he shall be obliged to warn the employer: under a week-to-week accounting, not less than one day [previously], and under a two-week or monthly accounting, not less than 7 days [previously]."

Article 47 is translated above, note 20.

41. TEMPORARY WORKERS *v.* GRAIN SUPPLY

38. See above, note 20.

42. BREAD TRUST *v.* F.

39. This device for raising wages is only one among many which may be used by a manager to overcome the limitations imposed from above. In fact, ever since the inauguration of the Five-Year Plans, actual wages have consistently exceeded planned wages and individual ministries and enterprises have consistently overexpended the wage funds assigned to them.

43. T. *v.* BREAD TRUST

40. Cf. Article 36, translated above, note 18.

44. WORKERS *v.* BREAD TRUST

41. On the history and nature of Soviet collective contracts, see Berman, *Justice in Russia,* pp. 256, 263.

42. Article 64 of the Labor Code provides: "In case the employee is transferred to lower paying work, his former wage shall be maintained for him for two weeks from the day of his transfer."

43. See above, note 18.

46. WORKERS *v.* ODESSA AND NIKOLAEVSK TRUSTS

44. See translation, note 20.

47. SOCIAL INSURANCE AGENCY

45. Social insurance, covering loss of earning capacity due to sickness, injury, or old age, is administered by the trade unions through social insurance agencies. Only employed persons are socially insured, and those who are not members of a trade union do not receive full benefits. Premiums are paid not by the insured but by the enterprise, and they are calculated as a percentage of the enterprise's total wage bill, payable in a lump sum.

46. Articles 175–180 of the Labor Code set forth the general principles of social insurance. Article 176 states that social insurance covers medical aid, grants for temporary loss of earning capacity, pensions for permanent disability, old age pensions, and the like. Unemployment insurance was abolished in 1930 "in view of the liquidation of unemployment in the USSR." Article 178 states that social insurance premiums shall be paid by the enterprises, and that assessments may not be made upon the insured directly or through deductions from wages.

Article 179, upon which the defendant bread plant in the present case relied, states: "Nonpayment by enterprises, institutions, businesses, and individual persons of the insurance premiums due from them (Art. 178) shall in no way deprive workers hired by them of the right to receive all grants provided for in Article 176 and subsequent Articles of this code."

For the conditions and rates of payment of social insurance, see Hazard, "Personal Injury and Soviet Socialism," p. 545.

48. WATCHMAN; INSURANCE AGENCY

47. Article 403 of the Civil Code states: "Anyone who causes injury to the person or property of another shall be obliged to compensate for the injury caused. He shall be freed from this obligation if he proves that he was not able to prevent the injury, or that he was privileged to cause the injury, or that the injury arose as a consequence of the intent or gross negligence of the person injured."

48. On review by way of supervision, see above, p. 12, note 8.

49. Literally, "appealed in the administrative order," which means a resort to the next higher administrative organ.

50. The decision of the Odessa Regional Court on appeal was a "final judgment," and was executed. The subsequent procedure "by way of supervision" is thought of as extraordinary (though in fact it is usual).

51. Cf. Case 53, "Odessa Bakery v. S." and Case 42 "Odessa Bread Trust v. F."

52. The "procedural objection" was apparently based on the rule that administrative findings of fact are not subject to judicial review.

49. CARPENTER

53. Disabilities are divided into several categories, of which the first is loss of all capacity to work; the second is loss of capacity to work at one's profession or at any other profession, but not loss of capacity to do work of a general character; the third is loss of capacity to work under normal conditions for the profession though retaining capacity to work intermittently during a shortened working day or at another profession requiring considerably less skill. See Hazard, "Personal Injury and Soviet Socialism," p. 545.

54. Article 413 of the Civil Code states: "A person or enterprise which has paid insurance allowances for an injured person under the system of social insurance shall not be obligated to compensate for injury caused by the occurrence of the contingency insured against.

"However, if the injury is caused by a criminal act or omission of the entrepreneur, the social insurance agency, having satisfied the injured person, shall have a claim against the entrepreneur to the extent of the grant paid to the insured person.

"In such case the injured person who has not received full compensation for his injury under the system of social insurance shall have a supplementary claim against the entrepreneur."

The Supreme Court of the RSFSR has interpreted the words "criminal act or omission" "in the broad sense of a criminal nonobservance of measures of safety or placing the worker in improper working conditions, independent of whether or not a criminal case arises" (P. I. Stuchka, *Collection of Explanations of the Supreme Court of the RSFSR* [1931] p. 179).

Another important ruling upon this article by the Supreme Court of the USSR in 1943 is translated in Gsovski, *Soviet Civil Law*, II, 214–217.

50. INSURANCE AGENCY

55. The ruling of the Supreme Court of June 28, 1926, states: "(2) In view of the fact that the right to bring suit under Article 413 of the Civil Code arises at the moment of the infliction of harm, it is recognized that one who has received an injury [in the course of employment] has the right, by force of Article 413 and the note to Article 404 of the Civil Code, to bring suit even in the event that after receiving the injury he remains at his former work in the same enterprise and his former wage is in fact not reduced. [The note to Article 404 establishes a period of two years within which suit for injury caused by extra hazardous activity, such as that of railroads, trams, factories, construction, and the like, may be brought.—H.J.B.] After the organs of social insurance have clarified the question of social security, the court shall establish the degree of disability of the injured person and the injury caused and, depending upon these circumstances, shall hand down a decision concerning the exaction of the appropriate supplementary compensation under the third paragraph of Article 413 of the Civil Code. [See above, preceding note.]

"In instances when the wage of the injured person who has remained at his former work in the same enterprise has in fact not been reduced after the injury, in comparison with his former wage and the wage of other workers of the same category, the enterprise has the right to set off by way of execution, decision or interpretation of a court (Article 185 of the Code of Civil Procedure) the wage received by the plaintiff against the supplementary compensation determined by the court. . ." (Stuchka, *Collection of Explanations of the Supreme Court of the RSFSR*, p. 179).

56. Counsel for the appellant, Mr. Konstantinovsky, was rebuked for relying on a previous decision as a precedent. However, the ruling of the Supreme Court, as distinguished from its decision in the particular case, has binding effect as an interpretation of the law.

51. CASHIER K.

57. Article 141 of the Labor Code states: "For all especially dangerous jobs or jobs which involve remaining in abnormal temperatures, in dampness or in dirt, as well as in instances in which considerations of social hygiene are presented, the workers shall be given at the expense of the enterprise special clothing and protective contrivances (glasses, masks, respirators, soap, etc.) according to lists of jobs and norms established by the People's Commissariat of Labor."

52. CH. *v.* BREAD TRUST

58. The Labor Inspection is a trade union agency charged with the investigation of trouble situations. See above, Case 32, note 12.

53. BAKERY *v.* S.

59. See above, note 30.

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